TEXAS REGISTER

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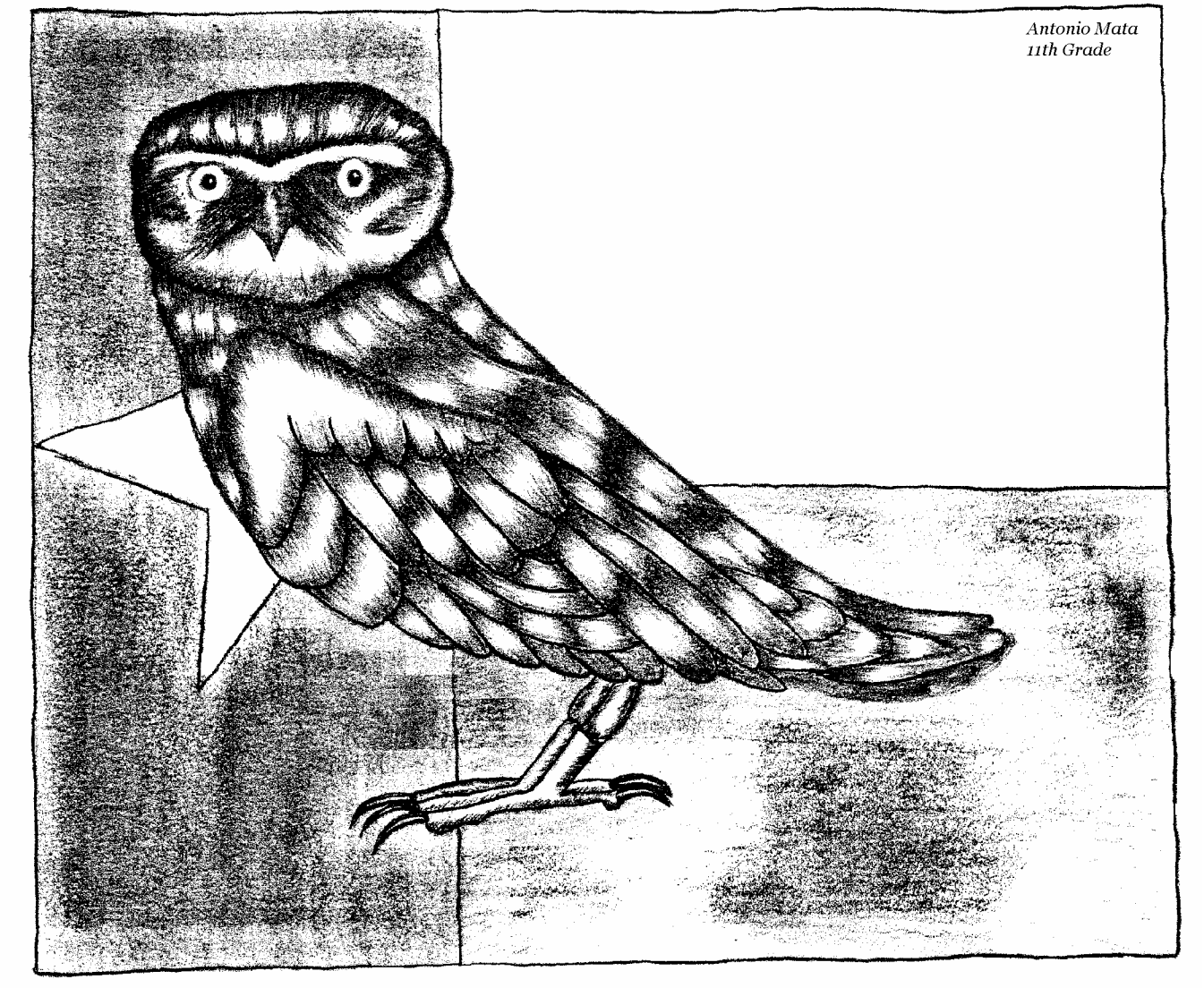

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: Subadmin@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinion

EAO-467. The Texas Ethics Commission has been asked whether certain corporate expenditures for a lobbyist to attend a political fundraiser golf tournament are permissible. (AOR-530)

SUMMARY

The lobby law does not prohibit a corporation from making the expenditures for a lobbyist's own transportation, lobbyist lodging, and food and beverages to attend a political fundraiser. If the expenditures were not made with the intent that they be used in connection with a campaign for an elective office or made with the intent to assist an elective officeholder, they are not regulated by Title 15 of the Election Code. A corporation may not pay a lobbyist's entry fee to the golf tournament. The fact that the corporate employee while on corporate time makes the expenditures instead of the corporation making the expenditures does not change the result to the questions discussed above.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes:

(1) Chapter 572, Government Code;

(2) Chapter 302, Government Code;

(3) Chapter 303, Government Code;

(4) Chapter 305, Government Code;

(5) Chapter 2004, Government Code;

(6) Title 15, Election Code;

(7) Chapter 36, Penal Code; and

(8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200600251
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: January 18, 2006

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS PLANTS

SUBCHAPTER P. DIAPREPES ROOT WEEVIL QUARANTINE

4 TAC §19.161

The Texas Department of Agriculture (the department) proposes amendments to §19.161, concerning a quarantine for the Diaprepes root weevil, *Diaprepes abbreviatus* (L). The amendments are made to prevent the spread of the Diaprepes root weevil into other citrus and nursery growing areas of Texas and to facilitate its eradication. Due to the detection of Diaprepes root weevils in 2001 in an orange grove located 0.2 miles West of the intersection of Hobbs Drive and North 2nd Street in McAllen, Texas, the department quarantined the grove and the area within 300-yards surrounding the grove to facilitate eradication of this pest. As a part of this effort, Tedder traps are deployed in both the quarantined area and the area adjacent to the quarantined area, and monitored weekly. Of the 269 traps currently in use, 124 are deployed outside the quarantined area. Seventeen adults of Diaprepes were detected outside the quarantined area, a majority in August - November of 2005. Of the 17 adults, nine were detected in and around the Timberhill Mobile Park and 8 in and around Plaza del Lagos. As a result of the detections, the department adopted on an emergency basis on December 2, 2005, the proposed amendments to the Diaprepes root weevil quarantine that are the subject of this filing. The emergency filing was published in the December 16, 2005, issue of the *Texas Register* (30 TexReg 8371). The department believes that the expansion of the quarantined area, as proposed, enhances chances for a successful eradication since it prevents artificial spread of the quarantined pest into other citrus and nursery growing areas of Texas.

Amended §19.161 expands the quarantined area in correspondence with the detection of the Diaprepes root weevils outside the current quarantined area.

Dr. Shashank Nilakhe, state entomologist, has determined that for the first five-year period the proposed amendments are in effect, there is no anticipated fiscal impact on state or local government as a result of administration and enforcement of the amended section, as proposed.

Dr. Nilakhe has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amended section will be that the amendments will assist in eradication of the pest and prevention from it becoming widespread. Treatments to eradicate the quarantined pest will be required in those areas identified in the quarantine, as amended. The department will contract with a commercial applicator to make the required treatments in dooryards, and treatments to groves will be handled through a cooperative effort with Texas Citrus Mutual. There will be no costs to individuals, microbusinesses or small businesses required to comply with the amended section.

Comments on the proposal may be submitted to Dr. Shashank Nilakhe, State Entomologist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §19.161 are proposed under the Texas Agriculture Code, §71.001, which authorizes the department to establish quarantines against out-of-state diseases and pests; §71.002, which authorizes the department to establish quarantines against in-state diseases and pests; and §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances.

The Texas Agriculture Code, Chapter 71, is affected by this proposal.

§19.161. Quarantined Areas.

The quarantined areas are:

(1) Within Texas:

(A) the citrus grove located in Hidalgo County, McAllen, Texas, 0.20 miles West of the intersection of Hobbs Drive and North 2nd Street and the area within approximately 300[-]yards surrounding the grove in all directions; the property located at 9601 N. 10th Street, Unit 1-11, Hidalgo County, McAllen, Texas and the surrounding area within approximately 300 yards in all directions, including the citrus grove, comprised of approximately 20 acres, located south of the Timberhill Mobile Park; and the property located at 3539 Plaza del Lagos, Hidalgo County, Edinburg, Texas and the surrounding area within approximately 300-yards in all directions; and

(B) any other area where the quarantined pest is detected.

(C) The map of the quarantined area may be obtained from the Valley Regional Office, 900-B, East Expressway, San Juan, Texas 78589.

(2) (No change).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2006.

TRD-200600216
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: February 26, 2006
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.80

The Railroad Commission of Texas proposes to amend §3.80, relating to Commission Forms, Applications and Filing Requirements, to add three new Railroad Commission Oil and Gas Division Forms to Table 1. The new forms are Form OW-1, entitled "Application for Authority to Conduct a Surface Inspection of Orphaned Oil or Gas Wells"; Form OW-2, entitled "Application for Certificate of Designation as the Operator of Orphaned Oil or Gas Wells"; and Form OW-3, entitled "Application for Payment for Reactivating or Plugging an Orphaned Oil or Gas Well." The Commission also proposes to delete from Table 1 the entries for Forms P-1 and P-2, Producer's Monthly Report of Oil Wells and Producer's Monthly Report of Gas Wells, respectively.

The Commission has designed the proposed new forms proposed to be added to Table 1 of §3.80(a) to meet the requirements established by those sections of House Bill (HB) 2161, enacted by the 79th Texas Legislature (Regular Session, 2005), relating to the Orphan Well Reduction Program and plugging of orphaned wells by surface estate owners. HB 2161, among other things, added to Chapter 89 of the Texas Natural Resources Code a new §89.047, relating to the Orphaned Well Reduction Program. This new section includes procedures, requirements, and incentives for a person to assume operatorship and regulatory responsibility for orphaned oil or gas wells. The new statutory provision requires that the Commission establish a program to allow approval of applications for authorization that would allow an operator to perform an inspection of a well site for consideration of assuming operatorship of an orphan well, to provide for payments from the state's Oil-Field Cleanup Fund (OFCUF) to "adopters" of orphaned wells, and to provide for the certification of a well as "orphan" for the purpose of a severance tax exemption and exemption from Oil-Field Cleanup Regulatory fees on production from "adopted" orphaned wells. This program became effective on January 1, 2006.

HB 2161 also added to Chapter 89 of the Texas Natural Resources Code new §89.048, which authorizes the Commission to reimburse from the Oil-Field Cleanup Fund a portion of costs incurred by surface estate owners who plug orphaned wells on their property. This new section also became effective on January 1, 2006.

New §89.048 of the Texas Natural Resources Code defines an "orphaned well" as a well for which the Commission has issued a permit, for which production of oil or gas or another activity under Commission jurisdiction has not been reported to the Commission for the preceding 12 months, and whose operator's Commission-approved P-5 Organizational Report has lapsed.

The Commission proposes new Form OW-1, Application for Authority to Conduct a Surface Inspection of Orphaned Oil or Gas Wells, which is designed to ensure that the eligibility and other requirements of Texas Natural Resources Code, §89.047(b), (c), (d), and (e) are met. The Commission proposes that a person considering assumption of operatorship and regulatory responsibility for orphaned wells would file Form OW-1 and any required attachments in order to nominate the wells and apply for authority to conduct a surface inspection to determine whether he/she wishes to be designated as the operator of the wells. Proposed Form OW-1 would require that the applicant and the wells proposed for nomination meet the eligibility and other requirements of §89.047. If the wells have not been nominated already and the operator applying for well nomination meets all eligibility requirements, the Commission would accept the nomination and issue confirmation of authority to conduct a surface inspection of the nominated wells. The authority would expire 30 calendar days from the date of Commission approval. Statutory conditions of the authority include compliance with certain notice requirements and limitations of this authority. At least three days before the date of the surface inspection, the applicant must deliver written notice to the owner of record of the surface estate and any occupant of the tract on which the well is located.

The Commission proposes also to request that such notice be given to the appropriate Commission District Office. As required by Texas Natural Resources Code, §89.047(d), Form OW-1 states that the notice must include a copy of Commission-approved confirmation of authority to conduct a surface inspection; identify the orphaned wells; state the name, address, and telephone number of the operator; state the date the person intends to conduct the surface inspection; state the name of at least one representative of the person who will participate in the surface inspection; and state that the person intends to inspect the orphaned well in accordance with this section for the purpose of assessing the current status and viability of the well. These requirements would be satisfied by providing a copy of the completed and approved Form OW-1.

Proposed Form OW-1 also advises of the statutory limits placed by Texas Natural Resources Code, §89.047(e), on the authority to conduct a surface inspection. In conducting a surface inspection of the orphaned wells, the person may visually inspect the wells and all related equipment, tanks, and other facilities and may conduct noninvasive testing such as using a gauge to determine the pressure present at the wellhead but may not produce oil or gas from the wells, reenter the wells, pull tubing from or perform any other type of downhole work on the wells, conduct a salvage operation on the wells, or remove any tangible item from the well site or lease.

The Commission also proposes to include on Form OW-1 a notice to the applicant that issuance of the Confirmation to Conduct a Surface Inspection of Orphaned Wells does not guarantee that the Commission will designate the applicant as the operator of the referenced wells nor will it prevent transfer of the wells to an operator who has a good faith claim. The Commission must process any request for lease or well transfer (Form P-4) as those requests are received.

If after 30 days from the date of Commission approval of the authority to conduct a surface inspection or if after conducting the surface inspection the operator does not wish to be designated as the operator of the wells, the wells again would become eligible for nomination by another operator.

If an operator wishes to be designated as the operator of orphaned oil or gas wells under the Orphaned Well Reduction Program B whether or not the operator wishes to conduct a surface inspection of the orphaned wells B the operator must meet certain eligibility requirements and submit certain information and forms to the Commission. In order to be designated as the operator of orphaned wells under the Orphaned Well Reduction Program, the operator must be an operator in good standing and must have sufficient financial security in accordance with §3.78, relating to Fees and Financial Security Requirements) to cover the well or wells for which he wishes to be designated as operator. An operator in good standing is an operator who has a Commission-approved organization report; is the designated operator of at least one well within the Commission's jurisdiction; has filed with the Commission under Texas Natural Resources Code, §91.104, a bond, letter of credit, or cash deposit in an amount sufficient to qualify to operate one or more wells; and is not the subject of a Commission or court order regarding a violation of a Commission rule with which the operator has not complied or a complaint that has been docketed by the Commission alleging a violation of a Commission rule. In addition, if the well is subject to a Commission Final Order requiring plugging, the Commission must first conduct a hearing and enter a superceding order before the operator can be designated as the operator of the well.

If the operator meets all of the eligibility requirements, the operator may apply to the Commission for a Certificate of Designation as the Operator of Orphaned Oil or Gas Wells. The Commission proposes new Form OW-2, Application for Certificate of Designation as the Operator of Orphaned Oil or Gas Wells, for this purpose. The Form OW-2 must be accompanied by a completed and signed Form P-4, Producer's Transportation Authority and Certificate of Compliance, in accordance with §3.58, relating to Oil, Gas, or Geothermal Resource Operator's Reports; if necessary, a completed and signed Form P-6, Request for Permission to Consolidate/Subdivide Leases, if the operator is not requesting designation as the operator of all wells on a lease; a factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate accessed by the well, such as evidence of a current oil and gas lease or a recorded deed conveying a fee interest in the mineral estate; and a non-refundable fee in the amount of $250 for each well for which the operator wishes to be designated as the operator.

If all requirements were met, the Commission would issue the Certificate of Designation as Operator of an Orphaned Well, in accordance with Texas Natural Resources Code, §89.047, by approving the Form OW-2.

An operator adopting orphaned wells from January 1, 2006, to December 31, 2007, may be eligible to receive certain benefits, such as a payment from the Oil-Field Cleanup Fund and/or an exemption from severance taxes (Tax Code, §202.060) and Oil-Field Cleanup Regulatory fees (Texas Natural Resources Code, §§81.116 and 81.117) on future oil or gas production from the wells.

An operator who is designated as the operator of an orphaned oil or gas well (an operator who has received a Commission-approved Certificate of Designation as Operator of an Orphaned Well, in accordance with Texas Natural Resources Code, §89.047) may be entitled to a severance tax exemption. HB 2161 amended Chapter 202 of the Tax Code to provide a severance tax exemption from oil or gas produced from a reactivated orphaned well under the Orphaned Well Reduction Program.

The person responsible for paying the tax must apply to the Comptroller of Public Accounts (Comptroller). The statutes require that an application for a severance tax exemption include a copy of the certificate of designation as the operator of an orphaned well issued by the Commission and require that the Comptroller approve the application if the person demonstrates that the hydrocarbon production is eligible. The Comptroller may require a person applying for the tax exemption to provide any relevant information necessary and may establish procedures to comply with the new law. The exemption takes effect on the first day of the month following the month in which the Comptroller approves the application. Because the exemption is non-transferable, if the person to whom this certificate is issued ceases to be the operator of the well as shown by Commission records, the Commission will notify the Comptroller and the exemption will expire on the date the Comptroller receives the notice.

In addition, an operator who is designated as the operator of an orphaned oil or gas well (an operator who has received a Commission-approved Certificate of Designation as Operator of an Orphaned Well, in accordance with Texas Natural Resources Code, §89.047) may be entitled to a payment of $0.50 per foot of well depth if the operator plugs the well or reactivates the well. If the operator and the well meet the eligibility requirements, the operator may apply for payment. A well is considered to be in continuous active operation for purposes of payment if: (1) the well is a producing well (a well classified by the Commission as an oil or gas well in accordance with Commission rules) and the well has produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months as shown in Commission records and as authorized by a permit issued by the Commission; or (2) the well is a service well and the well has been used for the disposal or injection of oil and gas wastes or another purpose related to the production of oil or gas for at least three consecutive months as shown in Commission records and as authorized by a permit issued by the Commission. The statutes define a "Service well" as a well for which the Commission has issued a permit that is not a producing well, including an injection, disposal, or brine mining well.

The Commission proposes that a designated operator wishing to apply for the payment authorized under Texas Natural Resources Code, §89.047, would file with the Commission's Field Operations Section a completed and signed Form OW-3, Application for Payment for Reactivating or Plugging an Orphaned Oil or Gas Well, and any required attachments, including a copy of the Commission-approved certificate of designation as the operator of an orphaned well; and, if the well was plugged, Form W-3 (Plugging Record); if the well was produced, signed documentation proving that the well produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months; or if the well was used as a service well, a copy of the injection/disposal/other well permit, a copy of the completion report, and signed documentation proving that the well was used as an injection or disposal or other service well for a period of at least three consecutive months.

In accordance with Texas Natural Resources Code, §89.047, the operator must be designated as the operator of the orphaned

well on or after January 1, 2006, and on or before December 31, 2007, in order to be entitled to receive the payment under the Orphan Well Reduction Program. In addition, the statutes require that the Commission make payments to operators in the same order the Commission determines the operators to be entitled to the payments. Further, the aggregate amount of such payments in a state Fiscal Year (September 1 through August 31) may not exceed $500,000. And, as mentioned before, the payment is nontransferable; therefore, the Commission may make the payment only to the operator who was designated as the operator of the orphaned well. Finally, an operator may not receive more than one payment under that subsection for the same well or cumulative payments in an amount that exceeds the amount of the bond, letter of credit, or cash deposit the operator has filed with the Commission under Texas Natural Resources Code, §91.104.

HB 2161 also provides for civil penalties for filing a false application for the purpose of receiving a tax exemption and provides the Attorney General with the authority to recover a penalty.

As noted, HB 2161 also added to Chapter 89 of the Texas Natural Resources Code new §89.048, which authorizes reimbursement of a portion of the costs incurred by a surface estate owner for plugging or orphaned wells. The Commission proposes that a surface estate owner complete and file proposed new Form OW-3, Application for Payment for Reactivating or Plugging an Orphaned Oil or Gas Well, when applying for such reimbursement.

New Texas Natural Resources Code, §89.048, authorizes the Commission to reimburse the owner for the cost of plugging an orphaned well on the surface owner's property in an amount not to exceed 50 percent of the lesser of actual costs or the average cost incurred by Commission in the preceding 24 months in plugging similar wells. The new section authorizes the Commission to make such payments from the Oil-Field Cleanup Fund (OFCUF). Under Texas Natural Resources Code, §89.048, the surface estate owner must contract with a Commission-approved well plugger to plug an orphaned well on his/her property. The well plugger under contract must mail to the operator of record at least 30 days before plugging operations a notice of its intent to plug, assume responsibility for the physical operation and control of the well (file a one-signature Form P-4, Producer's Transportation Authority and Certificate of Compliance), file financial security to cover the well, and plug the well in compliance with Commission rules. Upon successful plugging of the well by the well plugger, the surface estate owner would submit to the Commission a completed and signed Form OW-3 and documentation of the plugging costs. The Commission would then reimburse the surface estate owner from the OFCUF for the lesser of 50 percent of the documented well-plugging costs or the average Commission costs for plugging a similar well in the same general area within the preceding 24 months.

The Commission also proposes to delete from Table 1 the entries for Forms P-1 and P-2, Producer's Monthly Report of Oil Wells and Producer's Monthly Report of Gas Wells, respectively. These forms were replaced by Form PR, Monthly Production Report, on February 11, 2005.

Leslie Savage, Oil and Gas Division planner, has determined that for each year of the first five years the amendments as proposed would be in effect, there will be fiscal implications for the state. The Orphaned Well Reduction Program became effective on January 1, 2006. Only those orphaned wells that are adopted between January 1, 2006, and December 31, 2007, are eligible for payments from the OFCUF and exemptions from severance tax and OFCUF regulatory fees on production. The law limits Commission payments to such operators from the OFCUF to $500,000, in the aggregate, per fiscal year.

The Orphaned Well Reduction Program will result in a maximum cost to the OFCUF (Fund 145) of $500,000 for each fiscal year from Fiscal Year 2006 through Fiscal Year 2010. The Commission estimates the cost to modify its computer systems to track any change of ownership of "adopted" wells to be approximately $21,300 in FY 2006. The $250 per well fee to adopt an orphaned well will offset those costs, as will the potential reduction in liability to the state's OFCUF. In addition, the Commission believes that the bill would result in a positive fiscal impact to the State associated with the increased production, but staff is unable to estimate this impact.

In Fiscal Year 2004, 743 wells were taken over by a new operator for which the P-5 Organization Report was delinquent for one year or longer. However, the new statutory provisions limit the maximum "pay-out" to operators who adopt orphan wells to $500,000, in the aggregate, per fiscal year. That maximum of $500,000 would cover 1,000,000 feet of well depth at $0.50 per foot. Assuming that the Commission's average plugging cost is about $3.00 per foot, the liability removed from the OFCUF would be $2.50/foot ($3.00 - $0.50), on the condition that the wells are put back in operations or plugged within three years. Although the Commission would pay out a maximum of $500,000 each fiscal year from the OFCUF, the liability to the OFCUF could be reduced by a maximum of $2,500,000 each fiscal year as a result of HB 2161. The average depth of all orphaned wells is 2841 feet. Using the 1,000,000-foot number noted above, up to 352 wells could be taken out of the orphaned well population annually.

There will be no fiscal implications for local governments.

Ms. Savage has estimated that the cost of compliance with the proposed amendments to §3.80 for individuals, small businesses, or micro-businesses will be negligible. Participation in the program is voluntary; nothing in the statutes requires an operator to take over wells under the Orphaned Well Reduction Program, so the cost to any one operator of taking over an orphaned well would not increase. Furthermore, the costs that would be born by any operator who wishes to "adopt" an orphaned well under the Program would be offset by the benefits available through the Program.

Texas Government Code, §2006.002, requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses or micro-businesses, a state agency must prepare a statement of the effect of the rule on small businesses and micro-businesses. This statement must include an analysis of the cost of compliance with the rule for small businesses and micro-businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales.

Because entities required to file an organization report and affiliates of such entities performing operations within the jurisdiction of the Commission are not required to make filings with the Commission reporting number of employees, labor costs,

amount of sales, or gross receipts, the Commission cannot determine whether a particular entity required to comply with the proposed amendments to §3.80 may be a small business or a micro-business. However, the Commission has determined that it is likely that some operators would meet the definitions of these terms in Texas Government Code, §2006.001. The Commission assumes further that, during a given year, at least one entity desiring to adopt an orphaned well under the Orphaned Well Reduction Program would be an individual, small business, or micro-business. Application under the Orphaned Well Reduction Program, including filing of proposed Form OW-1, Form OW-2, Form OW-3 and required attachments is discretionary and, therefore, involve no additional costs. Furthermore, the requirements, prerequisites, and fees for receiving authority to conduct a surface inspection, designation as the operator of an orphaned oil or gas well, and payment for eligible adopted orphaned wells are the same requirements imposed by statute. The Commission has no discretion to change such requirements.

The Commission believes that adoption of proposed Forms OW-1, OW-2, and OW-3 would aid operators wishing to reap the benefits available under the Orphaned Well Reduction Program by clarifying the requirements, thereby reducing the possible compliance costs.

For the purpose of making the comparison required by Texas Government Code, §2006.002(c), the Commission assumes that, during a given year, at least one entity applying for authority to conduct a surface inspection of orphaned oil or gas wells by filing Form OW-1 with the Commission in accordance with §3.80 would be an individual, small business, or micro-business and that the that the cost of writing, typing, copying, and mailing the Form OW-1 and attachments would be $50. Therefore, the cost of complying with §3.80, as amended, would be $50 per employee if the entity has one employee, $2.50 if the entity has 20 employees, and $0.50 per employee if the entity has 99 employees. Comparable cost per employee of electronic filing for the largest businesses affected by the proposed amendment would be $0.10 for an employer of 500 persons and $0.05 for an employer of $1,000 persons.

Ms. Savage also has determined that for each year of the first five years that the amendments would be in effect, the primary public benefit would be increased production or other activities that support production for those orphaned wells that are reactivated and a reduction in the possibility of pollution of surface or subsurface water for those orphaned wells that are plugged.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission specifically requests comments and information on the proposed form changes that are part of this rulemaking. The Commission will accept comments for 30 days after publication in the *Texas Register*, and encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments to §3.80 pursuant to Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under Commission jurisdiction; and Texas Natural Resources Code, §§89.047 and 89.048, which establish the Orphaned Well Reduction Program, and which, with Texas Natural Resources Code, §91.112, authorize the Commission to make payments to surface estate owners who plug orphaned oil or gas wells on their property.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 89.047, 89.048, and 91.112.

Cross-reference to statute: Texas Natural Resources Code, §§81.051, 81.052, 89.047, 89.048, and 91.112.

Issued in Austin, Texas on January 10, 2006.

§3.80. Commission Oil and Gas Forms, Applications, and Filing Requirements.

(a) Forms. Forms required to be filed at the Commission shall be those prescribed by the Commission as listed in Table 1 of this subsection. A complete set of all Commission forms listed on Table 1 required to be filed at the Commission shall be kept by the Commission secretary and posted on the Commission's web site. Notice of any new or amended forms shall be issued by the Commission. For any required or discretionary filing, an organization may either file the prescribed form on paper or use any electronic filing process in accordance with subsections (e) or (f) of this section, as applicable. The Commission may at its discretion accept an earlier version of a prescribed form, provided that it contains all required information and meets the requirements of subsection (e)(3) of this section.
Figure: 16 TAC §3.80(a)

(b) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2006.

TRD-200600144
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: February 26, 2006
For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 2. RECOVERY OF STRANDED COSTS

16 TAC §25.263

The Public Utility Commission of Texas (commission) proposes an amendment to §25.263, relating to True-Up Proceeding. The proposed amendment will implement the provisions of Public Utility Regulatory Act (PURA) §39.262, which sets forth the requirements for the final true-up of stranded costs. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 32008 is assigned to this proceeding.

The commission proposes to amend §25.263 by modifying subsection (l)(3), which establishes the interest rate used to determine carrying costs on a utility's unsecuritized true-up balance. The proposed amendment changes the interest rate from the utility's cost of capital established in the utility's unbundled cost-of-service proceeding to the utility's most recently authorized or reported cost of debt. Additionally, the commission proposes to delete subsection (d)(1), which establishes the schedule by which companies were to file their true-up applications. Subsection (d)(1) is no longer needed because the filing dates listed therein have passed.

Darryl Tietjen, Director of the Financial Review Section of the Electric Industry Oversight Division, has determined that for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Tietjen has also determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be a more accurate alignment of the risks borne by the utilities in recovering from retail customers the unsecuritized true-up balances and interest charges on those balances, which are included in rates for electric delivery service. There will be no adverse economic effects on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost for persons who are required to comply with the section as proposed.

Mr. Tietjen has also determined that for each year of the first five years the proposed section is in effect, there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission Staff will conduct a public hearing on this rulemaking under the Administrative Procedure Act, Texas Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701, on Wednesday, March 1, 2006, at 10:00 a.m.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be filed no later than 45 days after publication. All comments should refer to Project Number 32008.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 & Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.252, which addresses a utility's right to recover stranded costs, and PURA §39.262, which requires the commission to conduct a true-up proceeding for each investor-owned electric utility after the introduction of customer choice and which prohibits over-recovery of stranded costs.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.252 and 39.262.

§25.263. True-up Proceeding.

(a) - (c) (No change.)

(d) Obligation to file a true-up proceeding.

(1) Each TDU, its APGC, and its AREP shall jointly file a true-up application pursuant to subsection (e)[~~of this section according to the following schedule~~].

[~~(A)~~] [~~Texas-New Mexico Power Company and First Choice Power, Inc.--not earlier than January 12, 2004, and not later than ten days thereafter;~~]

[~~(B)~~] [~~TXU SESCO Energy Services Company--not earlier than January 12, 2004, and not later than ten days thereafter;~~]

[~~(C) Centerpoint Energy Houston, LLC, Reliant Energy Retail Service, LLC, and Texas Genco, LP--not earlier than March 31, 2004, and not later than ten days thereafter;~~]

[~~(D) AEP Texas North Company and Mutual Energy WTU, LP--not earlier than May 28, 2004, and not later than ten days thereafter;~~]

[~~(E) AEP Texas Central Company and Mutual Energy CPL, LP--the later of September 3, 2004, or 60 days following completion of the sale of its generation assets.~~]

[~~(F) Notwithstanding the schedule in subparagraphs (A) - (E) of this paragraph, the commission may allow a company, upon a showing of good cause, to file its true-up application on a different date.~~]

(2) - (3) (No change.)

(e) - (k) (No change.)

(l) TDU/APGC True-up balance.

(1) - (2) (No change.)

(3) The TDU shall be allowed to recover, or shall be liable for, carrying costs on the true-up balance. This provision shall apply to all amounts the commission has authorized to be collected under this section that have not been securitized. Carrying costs on the unrecovered true-up balance shall be calculated from January 1, 2002, until the true-up balance is fully recovered, and shall be established as provided in this subsection. Carrying costs shall be calculated using an interest rate based on the utility's cost of debt.[~~Carrying costs shall be calculated using the utility's cost of capital established in the utility's UCOS proceeding, and shall be calculated for the period of time from the date of the true-up final order until fully recovered.~~]

(A) If, prior to the effective date of this rule the commission has entered in a true-up proceeding a final order establishing carrying costs on the TDU's unsecuritized balance, the TDU shall file an application to adjust the carrying costs on a prospective basis in conformance with this paragraph within 30 days of the effective date of this paragraph. The establishment of the cost of debt shall be based upon one of the following methods:

(i) The cost of debt as determined in a final commission order, provided that the order was entered within three years of the effective date of this rule, for a rate proceeding in which the TDU's cost of debt was 1) explicitly addressed, or 2) can be determined based upon the order's authorized weighted-average cost of capital (overall rate of return on invested capital), proportions of debt and equity, and allowed return on equity; or

(ii) If the commission, within three years of the effective date of this rule, has not entered a final order in a rate proceeding that addresses the TDU's cost of debt, the utility's cost of debt shall be based upon the cost of debt reported in the utility's most recent Earnings Monitoring Report filed pursuant to §25.73 of this title (relating to Financial and Operating Reports), adjusted for known and measurable changes.

(B) If, prior to the effective date of this rule the commission has not entered in a true-up proceeding a final order establishing carrying costs on the TDU's unsecuritized balance, the TDU's carrying costs from January 1, 2002 forward shall be established in a proceeding under subsection (n) of this section. The cost of debt shall be determined according to the provisions of subparagraph (A)(i) - (ii) of this paragraph.

(C) In each subsequent rate case for the TDU, the calculation of carrying costs on the TDU's unsecuritized true-up balance shall be reviewed and adjusted to reflect changes in the TDU's cost of debt.

(m) - (n) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2006.

TRD-200600203
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: February 26, 2006
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.16

The Texas Funeral Service Commission (Commission) proposes an amendment to Title 22, Texas Administrative Code, Chapter 203, §203.16, concerning Minimum Standards for Embalming.

The amendment to §203.16 is proposed because existing §203.16 does not have information prescribing the minimum information that should be contained on embalming case reports.

O.C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the rule amendment is in effect, there will be no fiscal implication for the state or local governments as a result of enforcing or administering the proposed rules.

Mr. Robbins further has determined that for each of the first five-year period the amended rule is in effect, the public benefit anticipated as a result of enforcing §203.16 will be to ensure uniformity on embalming case reports in order determine whether or not minimum standards have been followed for each embalming case. There will be no effect on large, small or micro-businesses. The anticipated economic costs to persons who are required to comply with these sections will be no more or less than the costs to individuals under §203.16 before this amendment and there is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, 512-479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The amendment to §203.16 is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, articles, or codes are affected by the proposal.

§203.16. Minimum Standards for Embalming and Reporting Embalming Procedures.

(a) In order to ensure the maximum inhibition of pathogenic organisms in the dead human body, the following minimum standards of performance shall be required of each licensed embalmer in the State of Texas in each instance in which he or she is authorized or required to embalm a dead human body.

(1) Embalming shall be performed only by embalmers licensed by the commission, in properly equipped and licensed establishments, or in the event of a disaster of major proportions, in facilities designated by a medical examiner, coroner, or state health official. Only three types of people may under certain circumstances assist licensed embalmers in embalming: provisional licensed embalmers under the personal supervision of a licensed embalmer; students who are enrolled in an accredited school of mortuary science working on a case intended toward completion of the student's clinical requirements, under the personal supervision of a licensed embalmer and with written permission to assist the embalmer from the person responsible for making arrangements or next of kin; and, in the event of a disaster of major proportions and with the prior approval of the executive director of the commission, embalmers licensed in another state as long as they are working with or under the general supervision of a person licensed as an embalmer in this state. It is not the intent of this rule to supersede §203.22 of this title (relating to Required Documentation for Embalming) which authorizes embalming using mortuary students.

(2) In order to prevent those involved in the embalming procedure from becoming unwitting carriers of pathogenic organisms into the community, they shall be required to utilize such protective devices as gloves capable of being sterilized, aprons or operating gowns during the embalming procedure. Disposable garments and/or gloves shall be permitted.

(3) Clothing directly exposed to contamination by pathogenic organisms shall either be burned or thoroughly cleaned and disinfected with a solution having phenol coefficient of not less than one before delivery to any person or before any further utilization.

(4) The technique utilized to effect eye, mouth, and lip closure shall be any technique accepted as standard in the profession. Regardless of the technique chosen, the embalmer shall be required to achieve the best results possible under prevailing conditions.

(5) The entire body shall be washed with an antiseptic soap or detergent. Fingernails, hair (including mustache and beard) shall be thoroughly cleaned, either before or immediately after arterial injection.

(6) Body orifices (open lesions and surgical incisions, nostrils, mouth, anus, and vagina) shall be treated with appropriate topical disinfectants either before or immediately after arterial injection. After cavity treatment has been completed, body orifices shall be packed in cotton saturated with a suitable disinfectant of a phenol coefficient not less than one.

(7) The arterial fluid to be injected shall be one commercially prepared and marketed with its percent of formaldehyde, or other approved substance, by volume (index) clearly marked on the label or in printed material supplied by the manufacturer.

(8) The fluids selected shall be injected into all bodies in such dilutions and at such pressures as the professional experience of the embalmer shall indicate, except that in no instance shall dilute solution contain less than 1.0% formaldehyde, or an approved substance that acts the same as formaldehyde, and as the professional experience of the embalmer indicates, one gallon of dilute solution may be used for each 50 pounds of body weight. Computation of solution strength is as follows: C x V = C' x V' C = strength of concentrated fluid V = volume of ounces of concentrated fluid C' = strength of dilute fluid V' = volume of ounces of dilute fluid

(9) Abdominal and thoracic cavities shall be treated in the following manner.

(A) Liquid, semi-solid, and gaseous contents which can be withdrawn through a trocar shall be aspirated by the use of at least 18 inches (mercury) vacuum.

(B) Concentrated, commercially prepared cavity fluid which is acidic in nature (6.5pH or lower) and contains at least two preservative chemicals shall be injected and evenly distributed throughout the aspirated cavities. A minimum of 16 ounces of concentrated cavity fluid shall be used for each adult body.

(C) Should distension and/or purge occur after treatment, aspiration and injection as required shall be repeated as necessary.

(10) The embalmer shall be required to check each body thoroughly after treatment has been completed. Any area not adequately disinfected by arterial and/or cavity treatment shall be injected using a hypodermic needle with disinfectant fluid for maximum disinfecting results.

(11) On bodies in which the arterial circulation is incomplete or impaired by advance decomposition, burns, trauma, autopsy, or any other cause, the embalmer shall be required to use the hypodermic method to inject all areas which cannot be properly treated through whatever arterial circulation remains intact (in any).

(12) In the event that the procedures in paragraphs (1)-(11) of this subsection leave a dead human body in condition to constitute a high risk of infection to anyone handling the body, the embalmer shall be required to apply to the exterior of the body a standard embalming powder and to enclose the body in a zippered plastic or rubber pouch prior to burial or other disposal.

(13) Dead human bodies donated to the State Anatomical Board shall be embalmed as required by the State Anatomical Board and where conflicting requirements exist, those requirements of the State Anatomical Board shall prevail.

(14) Nothing in this section shall be interpreted to require embalming if the next-of kin does not authorize embalming.

(15) All bodies should be treated in such manner and maintained in such an atmosphere as to avoid infestation by vermin, maggots, ants, and other insects; however, should these conditions occur, the body should be treated with an effective vermicide and/or insecticide to eliminate these conditions.

(16) No licensed establishment or licensed embalmer shall take into its or the embalmer's care any dead human body for embalming without exerting every professional effort, and employing every possible technique or chemical, to achieve the highest level of disinfecting.

(17) Nothing in this section shall be interpreted to prohibit the use of supplemental or additional procedures or chemicals which are known to and accepted in the funeral service profession and which are not specifically mentioned in this subsection.

(b) Minor variations in these procedures shall be permitted as long as they do not compromise the purpose of this rule as stated in subsection (a) of this section.

~~[(c) A report form, approved by the Texas Funeral Service Commission, shall be completed on each case of embalming. The completed form shall be retained for a two-year period and be made available to the Texas Funeral Service Commission, upon request, for inspection.]~~

(c) All embalming case reports must contain, at a minimum, all the information on the case-report form published following this subsection. This form is also on file in the commission's offices and may be accessed from the commission's website at www.tfsc.state.tx.us. Staff will make a copy of this form available upon request. Funeral establishments may use other forms, so long as the forms contain all the information on the published form. A case report shall be completed for each embalming procedure. The completed form shall be retained for two years following the procedure date and made available to the commission, upon request.
Figure: 22 TAC §203.16

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 13, 2006.

TRD-200600220
O.C. Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: February 26, 2006
For further information, please call: (512) 936-2466

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 13. LAND RESOURCES

SUBCHAPTER C. GROUNDWATER LEASING

31 TAC §13.30, §13.31

The General Land Office (GLO) proposes a new Subchapter C, relating to Groundwater Leasing, in Title 31, Part 1, Chapter 13 of the Texas Administrative Code. The proposed new subchapter C will contain rules governing the procedures for the leasing of groundwater resources on state lands. These rules are pro-

posed in accordance with Tex. Nat. Res. Code §31.051 and §51.121.

The GLO proposes new subchapter C, §13.30, relating to the GLO's Statement of Policy and §13.31, relating to Leasing Procedures. The proposed new sections are intended to provide guidance for interested parties as it relates to the GLO's policy and procedures regarding the exploration and development of groundwater resources on state lands.

These rules govern actions of the GLO and the commissioner in the exploration and leasing process as it relates to state groundwater resources. Section 13.30, relating to Statement of Policy, describes the policies of the GLO regarding the development of State groundwater resources; requires the submission of any proposed leases involving groundwater resources on permanent school fund lands to the School Land Board for review; and requires notification of any regional water planning group and/or groundwater conservation district in which lands proposed for such leases are located. Section 13.31, relating to Leasing Procedures, sets out the procedures for leasing groundwater resources either by sealed bid or direct negotiation.

Trace Finley, Associate Deputy Commissioner for the Texas General Land Office Policy and Government Affairs Division, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the amended sections as the amendments relate solely to administrative functions of the GLO.

Mr. Finley has also determined that there will be no economic cost to persons required to comply with these regulations, as these amendments add no additional restrictions or requirements. The public will benefit from the proposed rule amendments because the new sections will set out both the policy and procedures for the exploration and development of groundwater resources on State Lands. There will be no effect on small businesses, and a local employment impact statement on these proposed regulations is not required, because the proposed rule will not have any identifiable material adverse affect on any local economy in the first five years it will be in effect.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the proposed rulemaking as a "major environmental rule." Under the Government Code, a "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program.

The commissioner of the GLO has evaluated the proposed amendment to determine whether Texas Government Code, Chapter 2007, is applicable, and whether a detailed takings impact assessment is required. The commissioner has determined the proposed rules do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the commissioner has determined that the proposed rules will not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the new rule being proposed.

Comments may be submitted to Ms. Deborah Cantu, Texas Register Liaison, Texas General Land Office, Legal Services Division, P.O. Box 12873, Austin, TX 78711-2873; facsimile number (512) 463-6311; email address deborah.cantu@glo.state.tx.us. Comments must be received no later than 5:00 p.m., 30 (thirty) days after the proposed amendments are published.

These amendments are proposed under Texas Natural Resources Code, Chapter 31, including §31.051, which authorizes the commissioner to make and enforce suitable rules consistent with the law and Texas Natural Resources Code, Chapter 51, including §51.121 which authorizes the commissioner to lease unsold public school land for any purpose the commissioner determines is in the best interest of the state under terms and conditions set by the commissioner.

§13.30. Statement of Policy.

(a) This subchapter applies to applications to lease public lands dedicated to the permanent school fund for the purpose of exploring for or developing groundwater resources located on or under such lands.

(b) The provisions of this subchapter are intended to assure that the groundwater resources of permanent school fund lands are developed and produced in a manner that maximizes their potential while recognizing and taking into account the public interest, sound water use and conservation practices, and impacts on existing uses.

(c) Projects undertaken by a lessee to develop groundwater resources on permanent school fund lands will be subject to applicable local, state, and federal law as well as any administrative rules of groundwater conservation district(s) in which the lands may be located. Such projects may not export groundwater produced from state-owned land to a foreign country.

(d) Lessees will be authorized to develop groundwater resources on permanent school fund lands only when sufficient scientific data and technical information is available for an informed determination that the groundwater resource can be produced in a manner that will support an economically viable market with a sustained yield that does not significantly affect current uses of adjoining users of water from the same source in an adverse manner.

(e) The commissioner shall submit proposed leases of permanent school fund lands that include authorization for the commercial development of groundwater resources to the School Land Board for review and comment prior to final approval and execution of any such leases. Additionally, any regional water planning group and/or groundwater conservation district in which lands proposed for such leases are located shall be notified prior to final approval and execution of any such leases.

§13.31. Leasing Procedures.

(a) Permanent school fund lands may be leased for the exploration or development of groundwater resources through either a sealed bid procedure or through direct negotiation, at the discretion of the commissioner. Municipalities and quasi-municipal providers of public water supplies may be given a priority preference to lease permanent school fund lands for development of a municipal or domestic water supply.

(b) A party interested in leasing permanent school fund lands for the exploration or development of groundwater resources may submit a lease application. Alternatively, the commissioner or GLO staff may nominate a tract or tracts for inclusion in a sealed bid lease sale. A tract proposed for lease or nominated shall be described in sufficient detail that it can be identified and evaluated by interested parties. The commissioner will determine the lease procedure to be followed after considering interest in a tract and the best interest of the State.

(1) Contents of Application. A party interested in leasing permanent school fund lands for the exploration or development of groundwater resources shall submit an application to the GLO on forms approved by the commissioner. An acceptable application shall include the following information:

(A) Name, address, and phone number of the person or entity submitting the application. For applicants other than natural persons, an organizational charter or certificate and related documentation of its current authority to conduct business in Texas and the name and official capacity of an authorized representative or agent shall also be provided.

(B) A description of the permanent school fund lands sought to be leased.

(C) A description of the purpose of the lease and the activities to be undertaken or conducted on the leased premises.

(D) A map on a scale adequate to show the location of the proposed lease. State tract numbers and names of rivers, streams, and lakes shall be shown where applicable. Location of project features should be depicted to the extent such information is available.

(E) A business plan that describes the various phases of a groundwater development project, including exploration and analysis, regulatory compliance, project budget and financing alternatives, marketing, development and production, right of way acquisition, and transportation and delivery. The plan should also detail the expertise available to evaluate scientific data and information and to assure that the permitted uses can be conducted in a manner consistent with sound engineering and management principles.

(F) Such other financial and background information about the proposed lessee, related entities, principals, or guarantors as may be requested by the commissioner to evaluate the application, the creditworthiness and experience of the applicant, or the potential viability of the proposed project.

(2) Nomination procedures. The commissioner or GLO staff may nominate a tract for lease. In the event the commissioner determines that a bid sale is in the best interest of the State, the commissioner will set the terms and conditions upon which such nominated tracts will be offered for lease. These terms will be advertised and bids taken. The commissioner may accept the best bid meeting the minimum requirement set by the commissioner or by law, or the commissioner may reject any or all bids.

(c) Leases under this chapter may include provisions for bonuses upon execution, delay rentals, shut-in royalties, production royalties, advance royalties, in-kind royalties, or include the State or the permanent school fund as a participating interest in the development or exploration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 13, 2006.

TRD-200600222
Trace Finley
Policy Director
General Land Office
Earliest possible date of adoption: February 26, 2006
For further information, please call: (512) 305-8598

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PART 4. SCHOOL LAND BOARD

CHAPTER 151. OPERATIONS OF THE SCHOOL LAND BOARD

31 TAC §151.5

The School Land Board (SLB) proposes amendments to Title 31, Part 4, Chapter 151 of the Texas Administrative Code, adding new §151.5, relating to the Exploration and Development of Groundwater Resources on State Lands.

The revisions are proposed to be adopted to provide guidance related to the criteria to be considered when reviewing proposed leases for the exploration and development of groundwater that are referred to the SLB by the Commissioner of the General Land Office.

Trace Finley, Associate Deputy Commissioner for the Texas General Land Office Policy and Government Affairs Division, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the amended sections as the amendments relate solely to administrative functions of the SLB.

Mr. Finley has also determined that there will be no economic cost to persons required to comply with these regulations, as these amendments add no additional restrictions or requirements. The public will benefit from the proposed rule amendments because the new section will assure a thorough review of proposed projects and an assessment of the benefits and impacts to result from them. There will be no effect on small businesses, and a local employment impact statement on these proposed regulations is not required, because the proposed rule will not have any identifiable material adverse affect on any local economy in the first five years it will be in effect.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the proposed rulemaking as a "major environmental rule." Under the Government Code, a "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program.

The SLB has evaluated the proposed amendment to determine whether Texas Government Code, Chapter 2007, is applicable, and whether a detailed takings impact assessment is required. The board has determined the proposed rule does not affect pri-

vate real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the board has determined that the proposed rule would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the new rule being proposed.

Comments may be submitted to Ms. Deborah Cantu, Texas Register Liaison, Texas General Land Office, Legal Services Division, P.O. Box 12873, Austin, TX 78711-2873; facsimile number (512) 463-6311; email address deborah.cantu@glo.state.tx.us. Comments must be received no later than 5:00 p.m., 30 (thirty) days after the proposed amendments are published.

These amendments are proposed under Texas Natural Resources Code, Chapter 32, including §32.062, which authorizes the board to adopt rules related to procedure and to the sale, lease, and development of PSF lands.

Texas Natural Resources Code §51.121 and §32.061 are affected by this proposed rulemaking.

§151.5. Exploration and Development of Groundwater Resources on State Lands.

Upon request by the commissioner of the General Land Office (GLO), the School Land Board (SLB) will review proposed leases of permanent school fund lands that include authorization for the commercial development of underground water resources. Such review shall consider issues related to the project's consistency with the goals and policies of the SLB, including but not limited to:

(1) how the proposed project will take into account the public good, water conservation efforts, and economic growth;

(2) whether the project will adhere to applicable local, state, and federal laws as well as any administrative rules of groundwater conservation district(s) in which the lands may be located;

(3) whether the rate of return on the project to the permanent school fund is consistent with the goals and strategies of the SLB; and

(4) whether any water produced from the lands can be treated and transported in an economical manner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 13, 2006.

TRD-200600221
Trace Finley
Policy Director, General Land Office
School Land Board
Earliest possible date of adoption: February 26, 2006
For further information, please call: (512) 305-8598

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §211.1, concerning Definitions by amending the definitions of: academic program, accredited college or university, basic licensing course, firearms, field training program, high school diploma, patrol rifle, rifle, Texas peace officer, training coordinator, training cycle and training hours for clarification. The following definitions were added for clarification: precision rifle and resigned/terminated. Subsection (b) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will a be positive benefit to the public by clarifying the definitions and the rules promulgated by the Commission.

The Commission has determined that for each year of the first five year the section as proposed will be in effect there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 Highway 290 East, Suite 200, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.001 Definitions.

No other code, article, or statute is affected by this proposal.

§211.1. Definitions.

(a) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Academic alternative program--A program for college credit offered by a training provider recognized by the Southern Association of Colleges and Schools and the Higher Texas Education Board, authorized by the Commission to conduct preparatory law enforcement training as part of a degree plan program, and consisting of Commission-approved curricula.

(3) Accredited college or university--An institution of higher education that is accredited or authorized by the Southern

Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Commission on Colleges and Universities [~~Northwest Association of Schools and Colleges~~], or the Western Association of Schools and Colleges.

(4) - (9) (No change.)

(10) Basic licensing course--Any current commission developed course that is required before an individual may be licensed by the commission. The courses include: Peace Officer, Academic Alternative and [~~Criminal Justice Transfer Curriculum,~~] County Corrections[~~, and Basic Instructor~~].

(11) - (25) (No change.)

(26) Firearms--Any handgun, shotgun, precision rifle, patrol rifle, or fully automatic weapon that is carried by the individual officer in an official capacity [~~on or off duty~~].

(27) (No change.)

(28) Field training program--A program intended to facilitate a [~~peace officer's~~] transition from the academic setting to the performance of the general [~~law enforcement~~] duties of the appointing agency.

(29) - (30) (No change.)

(31) High school diploma--High school diploma is a document issued by a school district or a school accredited by the Texas Private School Accreditation Commission verifying that the recipient has successfully completed the course of study prescribed by the school district and accepted by the Texas Education Agency[~~, or a comparable regulatory body in another state~~].

(32) - (43) (No change.)

(44) Patrol rifle--Any [~~semi-automatic,~~] magazine-fed repeating rifle with iron/open sights or with a frame mounted optical enhancing sighting device, 3 power or less, that is carried by the individual officer in an official capacity [~~on or off duty~~].

(45) - (47) (No change.)

(48) Precision rifle--Any rifle with a frame mounted optical sighting device greater than 3 power that is carried by the individual officer in an official capacity.

(49) [~~(48)~~] Proprietary training contractor--An approved training contractor operated for a profit.

(50) [~~(49)~~] Public security officer--A person employed or appointed as an armed security officer by this state or a political subdivision of this state. The term does not include a security officer employed by a private security company that contracts with this state or a political subdivision of this state to provide security services for the entity.

(51) [~~(50)~~] Reactivate--To make a license issued by the commission active after at least a two-year break in service.

(52) Resigned/Terminated--an explanation of the circumstances under which the individual resigned (retired, honorably discharged), was terminated (dishonorably discharged, generally discharged), or other (killed in the line of duty, died, or disabled) in accordance with §1701.452.

(53) [~~(51)~~] Reinstate--To make a license issued by the commission active after disciplinary action or after expiration of a license due to failure to obtain required continuing education.

(54) [~~(52)~~] Renew--Continuation of an active license issued by the commission.

(55) [~~(53)~~] Reserve--A person appointed as a reserve law enforcement officer under the provisions of the Local Government Code, §85.004, §86.012 or §341.012.

[~~(54) Rifle--Any bolt action or semi-automatic rifle with magnified sights that is carried by the individual officer in an official capacity on or off duty.~~]

(56) [~~(55)~~] Self-assessment--Completion of the commission created process, which gathers information about a training or education program.

(57) [~~(56)~~] SOAH--The State Office of Administrative Hearings.

(58) [~~(57)~~] Successful completion--A result of:

(A) 70 percent or better; or

(B) C or better; or

(C) pass, if offered as pass/fail.

(59) [~~(58)~~] Telecommunicator--A dispatcher or other emergency communications specialist appointed under or governed by the provisions of the Occupations Code, Chapter 1701.

(60) [~~(59)~~] Texas peace officer--For the purposes of eligibility for the Texas Peace Officers' Memorial, an individual who had been elected, employed, or appointed as a peace officer under Texas law; an individual appointed under Texas law as a reserve peace officer, [~~who;~~] a commissioned deputy game warden, or a corrections officer in a municipal, county, or state penal institution, a federal law enforcement officer or special agent performing duties in this state, including those officers under Article 2.122, Code of Criminal Procedure, or any other officer authorized by Texas law.

(61) [~~(60)~~] Training coordinator--An individual, appointed by a commission-recognized training provider, who meets the requirements of §215.9 [~~has the knowledge and skills to oversee the training activity conducted by that provider~~].

(62) [~~(61)~~] Training cycle--A [~~One period from the set of contiguous~~] 48-month period as established by the Commission [~~periods that begins on September 1, 2001~~]. Each training cycle is composed of two contiguous 24-month units.

(63) [~~(62)~~] Training hours--Actual classroom or distance education hours. [~~One college semester hour equates to 20 training hours.~~]

(64) [~~(63)~~] Training program--An organized collection of various resources recognized by the commission for providing preparatory or continuing training. This program includes, but is not limited to, learning goals and objectives, academic activities and exercises, lesson plans, exams, skills training, skill assessments, instructional and learning tools, and training requirements.

(65) [~~(64)~~] Training provider--A governmental body, law enforcement association, alternative delivery trainer, or proprietary entity credentialed by the commission to provide preparatory or continuing training for licensees or potential licensees.

(66) [~~(65)~~] Verification (verified)--The confirmation of the correctness, truth, or authenticity of a document, report, or information by sworn affidavit, oath, or deposition.

(b) The effective date of this section is June 1, 2006 [~~2004~~] .

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 13, 2006.

TRD-200600217
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: February 26, 2006
For further information, please call: (512) 936-7717

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CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §217.1, concerning Minimum Standards for Initial Licensure.

The amendment to subsection (a)(11) changes "Texas State Board of Medical Examiners" to "Texas Medical Board".

A proposed amendment is being made to subsection (g)(4). Subsection (o) is being amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect there will a positive benefit to the public by better identifying the time period individuals may test.

The Commission has determined that for each year of the first five year the section as proposed will be in effect there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 Highway 290 East, Suite 200, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151. General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.304 Examination.

No other code, article, or statute is affected by this proposal.

§217.1. Minimum Standards for Initial Licensure.

(a) The commission shall issue a peace officer, jailer, temporary jailer, or public security officer license to an applicant who meets the following standards:

(1) - (10) (No change.)

(11) has been examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas Medical Board [~~Texas State Board of Medical Examiners~~]. The physician must be familiar with the duties appropriate to the type of license sought and appointment to be made. The appointee must be declared in writing by that professional within 180 days before the date of appointment by the agency to be:

(A) - (B) (No change.)

(12) - (18) (No change.)

(b) - (f) (No change.)

(g) A person must successfully complete the minimum training required for the license sought:

(1) - (3) (No change.)

(4) passing any examination required for the license sought prior to the expiration of the endorsement, [~~within two years of commission receipt of the licensing application;~~] and

(5) (No change.)

(h) - (n) (No change.)

(o) The effective date of this section is June 1, 2006 [~~2004~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 13, 2006.

TRD-200600218
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: February 26, 2006
For further information, please call: (512) 936-7717

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.17

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new section, submitted by the State Securities Board has been automatically withdrawn. The new section as proposed appeared in the July 8, 2005 issue of the *Texas Register* (30 TexReg 3953).

Filed with the Office of the Secretary of State on January 12, 2006.

TRD-200600190

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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §116.17

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new section, submitted by the State Securities Board has been automatically withdrawn. The new section as proposed appeared in the July 8, 2005 issue of the *Texas Register* (30 TexReg 3954).

Filed with the Office of the Secretary of State on January 12, 2006.

TRD-200600191

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER B. UNDERWRITING, MARKET ANALYSIS, APPRAISAL, ENVIRONMENTAL SITE ASSESSMENT, PROPERTY CONDITION ASSESSMENT, AND RESERVE FOR REPLACEMENT RULES AND GUIDELINES

10 TAC §§1.31 - 1.37

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of §§1.31 - 1.37, concerning the 2005 Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment and Reserve for Replacement Rules and Guidelines without changes to the proposal as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5147).

The sections are repealed in order to enact new sections conforming to Chapter 2306 of the Texas Government Code.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, article or statute is affected by the repeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2006.

TRD-200600210
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 1, 2006
Proposal publication date: September 2, 2005
For further information, please call: (512) 475-4595

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10 TAC §§1.31 - 1.37

The Texas Department of Housing and Community Affairs ("the Department" or "TDHCA") adopts new §§1.31 - 1.37. Sections 1.31, 1.32, and 1.36 are adopted with changes to the text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5148). Sections 1.33 - 1.35 and 1.37 are adopted without changes and will not be republished

This subchapter is adopted in order to maintain stand alone guidelines for underwriting, market analysis, appraisal, environmental site assessment, and property condition assessment performed for requests submitted to the Department for review and the establishment of reserve for replacement and subsequent monitoring for developments funded through the Department.

On September 2, 2005 the Draft 2006 Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement Rules and Guidelines were published in the *Texas Register*. Upon publication a public comment period commenced, ending on October 18, 2005. In addition to publishing the document in the *Texas Register*, a copy was published on the Department's web site and made available to the public upon request. The Department held public hearings in Lubbock, Abilene, Arlington, Mt. Pleasant, Crockett, Houston, Austin, Temple, San Antonio, Corpus Christi, McAllen, Midland and El Paso. In addition to comments received at the public hearings, the Department received written comments.

The scope of the public comment concerning the Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement Rules and Guidelines pertains to the following sections:

SUMMARY OF COMMENT RECEIVED UPON PUBLICATION OF THE PROPOSED RULES IN THE *TEXAS REGISTER* AND COMMENTS PROVIDED AT PUBLIC HEARINGS HELD BY THE DEPARTMENT ON ITEMS THAT RELATE DIRECTLY TO UNDERWRITING, MARKET ANALYSIS, APPRAISAL, ENVIRONMENTAL SITE ASSESSMENT, PROPERTY CONDITION ASSESSMENT, AND RESERVE FOR REPLACEMENT RULES AND GUIDELINES.

§1.32(d)(2)(H)(i) - Property Tax

Comment: Recently, I noticed in the Dallas Central Appraisal District that…they're using, I believe, an 8-1/2 percent cap rate, versus the 11 percent cap rate that we had been using, for estimating property taxes in the Dallas County area. And we've turned that over to some of our consultants, but we'd appreciate any help TDHCA could be in trying to monitor that, because it's hard enough to make deals work today without a substantial increase in property taxes on tax credit deals. *Churchill Residential*

Department Response: Staff does not recommend a change. Staff will work to collect and publish on its website appraisal district capitalization rates. At underwriting, the capitalization rate

published by taxing authorities is taken into consideration in determining the estimated property tax for the development. If the taxing authority does not publish a capitalization rate, an underwriting rate of 10% will be used. In both cases, comparable assessed values collected through the Department's annual Owner's Financial Certification process and submitted by applicants are also considered.

(H) Property Tax. Property Tax includes all real and personal property taxes but not payroll taxes. The underwriting tolerance level for this line item is 10%.

(i) The per unit assessed value will be calculated based on the capitalization rate published on the county taxing authority's website. If the county taxing authority does not publish a capitalization rate on the internet, a capitalization rate of 10% will be used or comparable assessed values may be used in evaluating this line item expense.

Board Response: Staff response accepted.

§1.32(e)(1)(B) - Identity of Interest Acquisitions

Comment: ...identity of interest transactions for land. We support these changes regarding recognizable cost to be allowed in an identity of interest land transaction. However, we believe the language should go further to specifically allow for increased values due to zoning changes. Currently, if a land owner owns a parcel of land that was zoned agricultural or residential when acquired, the acquisition costs plus only basis costs are acknowledged for underwriting carry over and cost certification purposes. If a land owner chooses to rezone a parcel of land to apartment or commercial zoning in a desirable part of a city, the current TDHCA policy discourages the land owner from placing that parcel into a tax credit deal because any value added purely from the rezoning is rejected by the department. Therefore, the current TDHCA policy discourages developers from putting more valuable parcels of land into tax credit deals, because the developer cannot realize the true value of the parcel of his or her land in the transaction. This policy is not in the best interest of the program, as many deals are not presented on more valuable parcels of land due to this current TDHCA policy. *Tropicana Building*

Department Response: Staff does not recommend further change. Cost to the related party seller to rezone the site is allowed as a holding cost that is then added to the original acquisition cost included in the development cost schedule. The contract price between the related party seller and Applicant may reflect the perceived value added by the change in zoning; however, for purposes of calculating the gap-based recommended tax credit allocation, total acquisition cost will be calculated based on the proposed language of Section 50.9(h)(7)(A)(iii).

(B) Identity of Interest Acquisitions.

(i) The acquisition will be considered an identity of interest transaction when an Affiliate of, a Related Party to, or any owner at any level of the Development Team

(I) is the current owner in whole or in part of the proposed property, or

(II) was the owner in whole or in part of the proposed property during any period within the 36 months prior to the first day of the Application Acceptance Period.

(ii) In all identity of interest transactions the Applicant is required to provide the additional documentation identified in §50.9(h)(7)(A) of this title to support the transfer price to be used in the underwriting analysis.

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed

(I) the original acquisition cost listed in the submitted settlement statement or, if a settlement statement is not available, the original asset value listed in the most current audited financial statement for the identity of interest owner, or

(II) the "as-is" value conclusion in the submitted appraisal.

Board Response: Staff response accepted.

§1.32(e)(3) - Site Work Costs

Comment: …we would ask that the $7,500 limit for site work be raised to a higher amount of between $9,000 to $11,000 to reflect the reality of the condition of current multi-family sites available for development (i.e. need for rezoning and greater due diligence). This amount has not increased since at least 2003 or longer. Even though third party engineer verification allows for use of a higher amount it would be more efficient to propose a higher amount initially and eliminate unneeded administrative work. *The NRP Group*

Department Response: Staff does not recommend a change. This safe harbor limit at $7,500 per unit is intended to account for more than the average historical site work cost on a per unit basis. Anything over that amount will still be accepted as long as substantiation for the significantly higher than average site work cost is provided. Relatively few developments exceed this guideline and the additional administrative work required to process the qualified third party verification is considered to be an important safeguard in evaluating costs with difficult site issues.

(3) Site Work Costs. Project site work costs exceeding $7,500 per Unit must be well documented and certified by a Third Party engineer on the required application form. In addition, for Applicants seeking Tax Credits, documentation in keeping with §50.9(i)(6)(G) of this title will be utilized in calculating eligible basis.

Board Response: Staff response accepted.

ADMINISTRATIVE CHANGES TO UNDERWRITING, MARKET ANALYSIS, APPRAISAL, ENVIRONMENTAL SITE ASSESSMENT, PROPERTY CONDITION ASSESSMENT, AND RESERVE FOR REPLACEMENT RULES AND GUIDELINES.

§1.31(c)(5) - Comparable Unit

Comment: The definition was reworded to provide clarification in the proposed rule of the difference in comparable units with regard to each of the following: inclusive capture rate, subsidized unit rent, and market rent. Upon further review and comments from staff and the Board, staff recommends the following change for further clarification:

(5) Comparable Unit--A Unit, when compared to the subject Unit, similar in overall condition, unit amenities, utility structure and common amenities, and

(A) for purposes of calculating the inclusive capture rate targets the same population and is likely to draw from the same demand pool;

(B) for purposes of estimating the subsidized Unit rent targets the same population and is similar in net rentable square footage and number of bedrooms; or

(C) for purposes of estimating the subject Unit market rent does not have any income or rent restrictions and is similar in net rentable square footage and number of bedrooms.

Board Response: Staff response accepted.

§1.32(d)(1)(A)(i) - Market Rents

Comment: Rent Comparable Unit is no longer a separate defined term in the proposed rules and it is unnecessary to provide the title of the section referenced (§1.33). Staff recommends the following change:

(i) Market Rents. The Underwriter reviews the Attribute Adjustment Matrix of Comparable Units by unit size provided by the Market Analyst and determines if the adjustments and conclusions made are reasoned and well documented. The Underwriter uses the Market Analyst's conclusion of adjusted Market Rent by unit, as long as the proposed Market Rent is reasonably justified and does not exceed the highest existing unadjusted market comparable rent. Random checks of the validity of the Market Rents may include direct contact with the comparable properties. The Market Analyst's Attribute Adjustment Matrix should include, at a minimum, adjustments for location, size, amenities, and concessions as more fully described in §1.33 of this subchapter.

Board Response: Staff response accepted.

§1.32(e)(1)(B) - Identity of Interest Acquisitions

Comment: The citation (§50.9(i)(7)(A)) of related language in the 2006 Qualified Allocation Plan is incorrect. Staff recommends the following change:

(B) Identity of Interest Acquisitions.

(i) The acquisition will be considered an identity of interest transaction when an Affiliate of, a Related Party to, or any owner at any level of the Development Team

(I) is the current owner in whole or in part of the proposed property, or

(II) was the owner in whole or in part of the proposed property during any period within the 36 months prior to the first day of the Application Acceptance Period.

(ii) In all identity of interest transactions the Applicant is required to provide the additional documentation identified in §50.9(h)(7)(A) of this title to support the transfer price to be used in the underwriting analysis.

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed

(I) the original acquisition cost listed in the submitted settlement statement or, if a settlement statement is not available, the original asset value listed in the most current audited financial statement for the identity of interest owner, or

(II) the "as-is" value conclusion in the submitted appraisal.

Board Response: Staff response accepted.

§1.32(e)(5) and (6) - Hard Cost Contingency and Contractor Fee Limits

Comment: Underwriting analysis of tax credit developments has consistently restricted eligible contractor fees and eligible contingency to certain percentages applied to the sum of eligible site work and eligible direct construction costs. Questions received during the cost certification process for tax credit developments indicate clarification on the calculation of eligible contractor fees is required. For consistency, similar clarification was added to language regarding contingency cost. Staff recommends the following change:

(5) Hard Cost Contingency. All contingencies identified in the Applicant project cost schedule will be added to Hard Cost Contingency with the total limited to the guidelines detailed in this paragraph. Hard Cost Contingency is limited to a maximum of 5% of direct costs plus site work for new construction Developments and 10% of direct costs plus site work for rehabilitation Developments. For tax credit Developments, the percentage is applied to the sum of the eligible direct construction costs plus eligible site work costs in calculating the eligible contingency cost. The Applicant's figure is used by the Underwriter if the figure is less than 5%.

(6) Contractor Fee Limits. Contractor fees are limited to 6% for general requirements, 2% for contractor overhead, and 6% for contractor profit. The percentages are applied to the sum of the direct construction costs plus site work costs. For tax credit Developments, the percentages are applied to the sum of the eligible direct construction costs plus eligible site work costs in calculating the eligible contractor fees. Minor reallocations to make these fees fit within these limits may be made at the discretion of the Underwriter. For Developments also receiving financing from TX-USDA-RHS, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or TX-USDA-RHS requirements.

Board Response: Staff response accepted.

§1.32(e)(7) - Developer Fee Limits

Comment: …we'd like some further clarification placed in the final version of the QAP regarding consulting fees. While we understand that the proposed language change would require that deals in the nonprofit set aside allow at least 80 percent of the developer fees to go to the nonprofit applicant, we are unclear as to whether or not the nonprofit applicant…will be allowed to pay consulting fees that amount to greater than 20 percent of the developer fees. If this is the intent of the change, we ask that language be added to that effect. If this is not the intent, we would also request further clarification to that effect as currently the real estate analysis division considers all consulting fees part of the developer fee for underwriting carry over and cost certification purposes. And if I could pause here real quick…Is the intent to include consulting fees in that? *Tropicana Building*

Department Response: Mr. Bowling's comment led staff to the realization that, although the consistent practice in underwriting has been to include housing consultant fees in total eligible developer fees limited to 15% of all other eligible costs, the REA Rules do not clearly reflect this practice. The following clarification is proposed:

(7) Developer Fee Limits. For Tax Credit Developments, the development cost associated with developer fees and Development Consultant (also known as Housing Consultant) fees included in Eligible Basis cannot exceed 15% of the project's Total Eligible Basis less developer fees, as defined in the QAP. Developer fee claimed must be proportionate to the work for which it is earned. In the case of an identity of interest transaction requesting acquisition Tax Credits, no developer fee attributable to acquisition of the Development will be included in Eligible Basis. For non-Tax Credit Developments, the percentage remains the same but is based upon total development costs less the sum of the fee itself, land costs, the costs of permanent financing,

excessive construction period financing described in subsection (f)(8) of this section, reserves, and any other identity of interest acquisition cost.

Board Response: Staff response accepted.

§1.36 - Property Condition Assessment Guidelines

Comment: Review of the language changes made for clarification revealed several administrative errors related to cutting and pasting in MSWord. The draft language omitted an explicit reference to any construction on the site that did not entail repairs or replacement. This omission could potentially lead to confusion over the details needed in a PCA. Staff recommends corrections:

Board Response: Staff response accepted.

The new sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

§1.31. General Provisions.

(a) Purpose. The Rules in this subchapter apply to the underwriting, market analysis, appraisal, environmental site assessment, property condition assessment, and reserve for replacement standards employed by the Texas Department of Housing and Community Affairs (the "Department" or "TDHCA"). This chapter provides rules for the underwriting review of an affordable housing development's financial feasibility and economic viability. In addition, this chapter guides the underwriting staff in making recommendations to the Executive Award and Review Advisory Committee ("the Committee"), Executive Director, and TDHCA Governing Board ("the Board") to help ensure procedural consistency in the award determination process. Due to the unique characteristics of each development the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

(b) Alternative Dispute Resolution Policy. In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title.

(c) Definitions. Many of the terms used in this subchapter are defined in the Department's Housing Tax Credit Program Qualified Allocation Plan and Rules, known as the "QAP", as proposed. Those terms that are not defined in the QAP or which may have another meaning when used in this subchapter, shall have the meanings set forth in this subsection unless the context clearly indicates otherwise.

(1) Affordable Housing--Housing that has been funded through one or more of the Department's programs or other local, state or federal programs or has at least one unit that is restricted in the rent that can be charged either by a Land Use Restriction Agreement or other form of Deed Restriction.

(2) Bank Trustee--A bank authorized to do business in this state, with the power to act as trustee.

(3) Cash Flow--The funds available from operations after all expenses and debt service required to be paid has been considered.

(4) Credit Underwriting Analysis Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board, described more fully in §1.32 of this subchapter.

(5) Comparable Unit--A Unit, when compared to the subject Unit, similar in overall condition, unit amenities, utility structure and common amenities, and

(A) for purposes of calculating the inclusive capture rate targets the same population and is likely to draw from the same demand pool;

(B) for purposes of estimating the subsidized Unit rent targets the same population and is similar in net rentable square footage and number of bedrooms; or

(C) for purposes of estimating the subject Unit market rent does not have any income or rent restrictions and is similar in net rentable square footage and number of bedrooms.

(6) Contract Rent--Maximum Rent Limits based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(7) DCR--Debt Coverage Ratio. Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." A measure of the number of times loan principal and interest are covered by Net Operating Income.

(8) Development--Sometimes referred to as the "Subject Development." Multi-unit residential housing that meets the affordability requirements for and requests or has received funds from one or more of the Department's sources of funds.

(9) EGI--Effective Gross Income. The sum total of all sources of anticipated or actual income for a rental Development less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(10) ESA--Environmental Site Assessment. An environmental report that conforms with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with the Department's Environmental Site Assessment Rules and Guidelines in §1.35 of this subchapter as it relates to a specific Development.

(11) First Lien Lender--A lender whose lien has first priority.

(12) Gross Program Rent--Sometimes called the "Program Rents." Maximum Rent Limits based upon the tables promulgated by the Department's division responsible for compliance by program and by county or Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA").

(13) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates or pricing conducted in accordance with the Department's Market Analysis Rules and Guidelines in §1.33 of this subchapter as it relates to a specific Development.

(14) Market Rent--The unrestricted rent concluded by the Market Analyst for a particular unit type and size after adjustments are made to rents charged by owners of Comparable Units.

(15) NOI--Net Operating Income. The income remaining after all operating expenses, including replacement reserves and taxes have been paid.

(16) Primary Market--Sometimes referred to as "Primary Market Area" or "Submarket" or "PMA". The area defined by the Qualified Market Analyst as described in §1.33(d)(9) of this subchapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(17) PCA--Property Condition Assessment. Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessments," "Property Condition Report," or "Property Work Write-Up." An evaluation of the physical condition of the existing property and evaluation of the cost of rehabilitation conducted in accordance with the Department's Property Condition Assessment Rules and Guidelines in §1.36 of this subchapter as it relates to a specific Development.

(18) Rent Over-Burdened Households--Non-elderly households paying more than 35% of gross income towards total housing expenses (unit rent plus utilities) and elderly households paying more than 40% of gross income towards total housing expenses.

(19) Reserve Account--An individual account:

(A) Created to fund any necessary repairs for a multifamily rental housing development; and

(B) Maintained by a First Lien Lender or Bank Trustee.

(20) Secondary Market--Sometimes referred to as "Secondary Market Area". The area defined by the Qualified Market Analyst as described in §1.33(d)(8) of this subchapter.

(21) Supportive Housing--Sometimes referred to as "Transitional Housing." Rental housing intended solely for occupancy by individuals or households transitioning from homelessness or abusive situations to permanent housing and typically consisting primarily of efficiency units.

(22) Sustaining Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses and mandatory debt service requirements for a Development.

(23) TDHCA Operating Expense Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual operating expense information collected through the Department's Annual Owner Financial Certification process and published on the Department's web site.

(24) Underwriter--The author(s), as evidenced by signature, of the Credit Underwriting Analysis Report.

(25) Unstabilized Development--A Development with Comparable Units that has been approved for funding by the TDHCA Board or is currently under construction or has not maintained a 90% occupancy level for at least 12 consecutive months following construction completion.

(26) Utility Allowance--The estimate of tenant-paid utilities, based either on the most current HUD Form 52667, "Section 8, Existing Housing Allowance for Tenant-Furnished Utilities and Other Services," provided by the local entity responsible for administering the HUD Section 8 program with most direct jurisdiction over the majority of the buildings existing or a documented estimate from the utility provider proposed in the Application. Documentation from the local utility provider to support an alternative calculation can be used to justify alternative Utility Allowance conclusions but must be specific to the Subject Development and consistent with the building plans provided.

(27) Work Out Development--A financially distressed Development seeking a change in the terms of Department funding or program restrictions based upon market changes.

§1.32. Underwriting Rules and Guidelines.

(a) General Provisions. The Department, through the division responsible for underwriting, produces or causes to be produced a Credit Underwriting Analysis Report (the "Report") for every Development recommended for funding through the Department. The primary function of the Report is to provide the Committee, Executive Director, the Board, Applicants, and the public a comprehensive analytical report and recommendations necessary to make well informed decisions in the allocation or award of the State's limited resources. The Report in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development by the Department.

(b) Report Contents. The Report provides an organized and consistent synopsis and reconciliation of the application information submitted by the Applicant. At a minimum, the Report includes:

(1) Identification of the Applicant and any Principals of the Applicant;

(2) Identification of the funding type and amount requested by the Applicant;

(3) The Underwriter's funding recommendations and any conditions of such recommendations;

(4) Review and analysis of the Applicant's operating pro-forma;

(5) Analysis of the Development's debt service capacity;

(6) Review and analysis of the Applicant's development budget;

(7) Evaluation of the commitment for additional sources of financing for the Development;

(8) Identification of related interests among the members of the Development Team, Third Party service providers and/or the seller of the property;

(9) Analysis of the Applicant's and Principals' financial statements and creditworthiness;

(10) Review of the proposed Development plan and evaluation of the proposed improvements;

(11) Review of the Applicant's evidence of site control and any potential title issues that may affect site control;

(12) Identification of the site which includes review of the independent site inspection report;

(13) Review of the Phase I Environmental Site Assessment in conformance with the Department's Environmental Site Assessment Rules and Guidelines in §1.35 of this subchapter or soils and hazardous material reports as required;

(14) Review of market data and Market Study information and any valuation information available for the property in conformance with the Department's Market Analysis Rules and Guidelines in §1.33 of this subchapter;

(15) Review of the appraisal, if required, for conformance with the Department's Appraisal Rules and Guidelines in §1.34 of this subchapter; and,

(16) Review of the Property Condition Assessment, if required, for conformance with the Department's Property Condition Assessment Rules and Guidelines in §1.36 of this subchapter.

(c) Recommendations in the Report. The conclusion of the Report includes a recommended award of funds or allocation of Tax Credits based on the lesser amount calculated by the program limit

method (if applicable), gap/DCR method, or the amount requested by the Applicant as further described in paragraphs (1) - (3) of this subsection.

(1) Program Limit Method. For Developments requesting Housing Tax Credits, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is as defined in the QAP. For Developments requesting funding through a Department program other than Housing Tax Credits, this method is based upon calculation of the funding limit based on current program rules at the time of underwriting.

(2) Gap/DCR Method. This method evaluates the amount of funds needed to fill the gap created by total development cost less total non-Department-sourced funds or Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee down to zero before reducing the amount of Department funds or Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Tax Credits. In making this determination, the Department adjusts the permanent loan amount and/or any Department-sourced loans, as necessary, such that it conforms to the DCR standards described in this section.

(3) The Amount Requested. The amount of funds that is requested by the Applicant as reflected in the application documentation.

(d) Operating Feasibility. The operating financial feasibility of Developments funded by the Department is tested by adding total income sources and subtracting vacancy and collection losses and operating expenses to determine Net Operating Income. This Net Operating Income is divided by the annual debt service to determine the Debt Coverage Ratio. The Underwriter characterizes a Development as infeasible from an operational standpoint when the Debt Coverage Ratio does not meet the minimum standard set forth in paragraph (4)(D) of this subsection. The Underwriter may choose to make adjustments to the financing structure, such as lowering the debt and increasing the deferred developer fee that could result in a re-characterization of the Development as feasible based upon specific conditions set forth in the Report.

(1) Income. The Underwriter evaluates the reasonableness of the Applicant's income estimate by determining the appropriate rental rate per unit based on contract, program and market factors. Miscellaneous income and vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are applied unless well-documented support is provided.

(A) Rental Income. The Program Rent less Utility Allowances or Market Rent or Contract Rent is utilized by the Underwriter in calculating the rental income for comparison to the Applicant's estimate in the application. Where multiple programs are funding the same units, Contract Rents are used, if applicable. If Contract Rents do not apply, the lowest Program Rents less Utility Allowance ("net Program Rent") or Market Rents, as determined by the Market Analysis that are lower than the net Program Rents, are utilized.

(i) Market Rents. The Underwriter reviews the Attribute Adjustment Matrix of Comparable Units by unit size provided by the Market Analyst and determines if the adjustments and conclusions made are reasoned and well documented. The Underwriter uses the Market Analyst's conclusion of adjusted Market Rent by unit, as long as the proposed Market Rent is reasonably justified and does not exceed the highest existing unadjusted market comparable rent. Random checks of the validity of the Market Rents may include direct contact with the comparable properties. The Market Analyst's Attribute Adjustment Matrix should include, at a minimum, adjustments for location, size, amenities, and concessions as more fully described in §1.33 of this subchapter.

(ii) Program Rents less Utility Allowance. The Underwriter reviews the Applicant's proposed rent schedule and determines if it is consistent with the representations made in the remainder of the application. The Underwriter uses the Program Rents as promulgated by the Department's division responsible for compliance for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all of the applications are underwritten with the rents promulgated for the same year. Program Rents are reduced by the Utility Allowance. The Utility Allowance figures used are determined based upon what is identified in the application by the Applicant as being a utility cost paid by the tenant and upon other consistent documentation provided in the application.

(I) Units must be individually metered for all utility costs to be paid by the tenant.

(II) Gas utilities are verified on the building plans and elsewhere in the application when applicable.

(III) Trash allowances paid by the tenant are rare and only considered when the building plans allow for individual exterior receptacles.

(IV) Refrigerator and range allowances are not considered part of the tenant-paid utilities unless the tenant is expected to provide their own appliances, and no eligible appliance costs are included in the development cost breakdown.

(iii) Contract Rents. The Underwriter reviews submitted rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The underwriting analysis will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant proposed rents may be used in the underwriting analysis with the recommendations of the Report conditioned upon receipt of final approval of such increase.

(B) Miscellaneous Income. All ancillary fees and miscellaneous secondary income, including but not limited to late fees, storage fees, laundry income, interest on deposits, carport rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a $5 to $15 per unit per month range. Exceptions may be made at the discretion of the Underwriter for garage income, pass-through utility payments, pass-through water, sewer and trash payments, cable fees, congregate care/assisted living/elderly facilities, and child care facilities.

(i) Exceptions must be justified by operating history of existing comparable properties.

(ii) The Applicant must show that the tenant will not be required to pay the additional fee or charge as a condition of renting an apartment unit and must show that the tenant has a reasonable alternative.

(iii) The Applicant's operating expense schedule should reflect an offsetting cost associated with income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iv) Collection rates of exceptional fee items will generally be heavily discounted.

(v) If the total secondary income is over the maximum per unit per month limit, any cost associated with the construction, acquisition, or development of the hard assets needed to produce an additional fee may also need to be reduced from Eligible Basis for Tax Credit Developments as they may, in that case, be considered to be a commercial cost rather than an incidental to the housing cost of the Development.

(C) Vacancy and Collection Loss. The Underwriter uses a vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss) unless the Market Analysis reflects a higher or lower established vacancy rate for the area. Elderly and 100% project-based rental subsidy Developments and other well documented cases may be underwritten at a combined 5% at the discretion of the Underwriter if the historical performance reflected in the Market Analysis is consistently higher than a 95% occupancy rate.

(D) Effective Gross Income. The Underwriter independently calculates EGI. If the EGI figure provided by the Applicant is within 5% of the EGI figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR the Underwriter will maintain and use its independent calculation unless the Applicant's proforma meets the requirements of paragraph (3) of this subsection.

(2) Expenses. The Underwriter evaluates the reasonableness of the Applicant's expense estimate by line item comparisons based upon the specifics of each transaction, including the type of Development, the size of the units, and the Applicant's expectations as reflected in their proforma. Historical stabilized certified or audited financial statements of the Development or Third Party quotes specific to the Development will reflect the strongest data points to predict future performance. The Department's database of property in the same location or region as the proposed Development also provides heavily relied upon data points. Data from the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as Public Housing Authority ("PHA") Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Finally, well documented information provided in the Market Analysis, the application, and other sources may be considered.

(A) General and Administrative Expense. General and Administrative Expense includes all accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. The underwriting tolerance level for this line item is 20%.

(B) Management Fee. Management Fee is paid to the property management company to oversee the effective operation of the property and is most often based upon a percentage of Effective Gross Income as documented in the management agreement contract. Typically, 5% of the Effective Gross Income is used, though higher percentages for rural transactions that are consistent with the TDHCA Database can be concluded. Percentages as low as 3% may be utilized if documented by a Third Party management contract agreement with an acceptable management company. The Underwriter will require documentation for any percentage difference from the 5% of the Effective Gross Income standard.

(C) Payroll and Payroll Expense. Payroll and Payroll Expense includes all direct staff payroll, insurance benefits, and payroll taxes including payroll expenses for repairs and maintenance typical of a conventional development. It does not, however, include direct security payroll or additional supportive services payroll. The underwriting tolerance level for this line item is 10%.

(D) Repairs and Maintenance Expense. Repairs and Maintenance Expense includes all repairs and maintenance contracts and supplies. It should not include extraordinary capitalized expenses that would result from major renovations. Direct payroll for repairs and maintenance activities are included in payroll expense. The underwriting tolerance level for this line item is 20%.

(E) Utilities Expense (Gas & Electric). Utilities Expense includes all gas and electric energy expenses paid by the owner. It includes any pass-through energy expense that is reflected in the EGI. The underwriting tolerance level for this line item is 30%.

(F) Water, Sewer and Trash Expense. Water, Sewer and Trash Expense includes all water, sewer and trash expenses paid by the owner. It would also include any pass-through water, sewer and trash expense that is reflected in the EGI. The underwriting tolerance level for this line item is 30%.

(G) Insurance Expense. Insurance Expense includes any insurance for the buildings, contents, and liability but not health or workman's compensation insurance. The underwriting tolerance level for this line item is 30%.

(H) Property Tax. Property Tax includes all real and personal property taxes but not payroll taxes. The underwriting tolerance level for this line item is 10%.

(i) The per unit assessed value will be calculated based on the capitalization rate published on the county taxing authority's website. If the county taxing authority does not publish a capitalization rate on the internet, a capitalization rate of 10% will be used or comparable assessed values may be used in evaluating this line item expense.

(ii) Property tax exemptions or proposed payment in lieu of tax agreement (PILOT) must be documented as being reasonably achievable if they are to be considered by the Underwriter. At the discretion of the Underwriter, a property tax exemption that meets known federal, state and local laws may be applied based on the tax-exempt status of the Development Owner and its Affiliates.

(I) Reserves. Reserves include annual reserve for replacements of future capitalizable expenses as well as any ongoing additional operating reserve requirements. The Underwriter includes minimum reserves of $200 per unit for new construction and $300 per unit for all other Developments. The Underwriter may require an amount above $300 for Developments other than new construction based on information provided in the PCA. Higher levels of reserves also may be used if they are documented in the financing commitment letters.

(J) Other Expenses. The Underwriter will include other reasonable and documented expenses, not including depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees. Lender or syndicator's asset management fees or other ongoing partnership fees also are not considered in the Department's calculation of debt coverage. The most common other expenses are described in more detail in clauses (i) - (iv) of this subparagraph.

(i) Supportive Services Expense. Supportive Services Expense includes the documented cost to the owner of any non-traditional tenant benefit such as payroll for instruction or activities personnel. The Underwriter will not evaluate any selection points for this item. The Underwriter's verification will be limited to assuring any

anticipated costs are included. For all transactions supportive services expenses are considered in calculating the Debt Coverage Ratio.

(ii) Security Expense. Security Expense includes contract or direct payroll expense for policing the premises of the Development. The Applicant's amount is typically accepted as provided. The Underwriter will require documentation of the need for security expenses that exceed 50% of the anticipated payroll expense estimate discussed in subparagraph (C) of this paragraph.

(iii) Compliance Fees. Compliance fees include only compliance fees charged by TDHCA. The Department's charge for a specific program may vary over time; however, the Underwriter uses the current charge per unit per year at the time of underwriting. For all transactions compliance fees are considered in calculating the Debt Coverage Ratio.

(iv) Cable Television Expense. Cable Television Expense includes fees charged directly to the owner of the Development to provide cable services to all units. The expense will be considered only if a contract for such services with terms is provided and income derived from cable television fees is included in the projected EGI. Cost of providing cable television in only the community building should be included in General and Administrative Expense as described in subparagraph (A) of this paragraph.

(K) The Department will communicate with and allow for clarification by the Applicant when the overall expense estimate is over 5% greater or less than the Underwriter's estimate. In such a case, the Underwriter will inform the Applicant of the line items that exceed the tolerance levels indicated in this paragraph, but may request additional documentation supporting some, none or all expense line items. If an acceptable rationale for the difference is not provided, the discrepancy is documented in the Report and the justification provided by the Applicant and the countervailing evidence supporting the Underwriter's determination is noted. If the Applicant's total expense estimate is within 5% of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR the Underwriter will maintain and use its independent calculation unless the Applicant's proforma meets the requirements of paragraph (3) of this subsection.

(3) Net Operating Income. NOI is the difference between the EGI and total operating expenses. If the NOI figure provided by the Applicant is within 5% of the NOI figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating the DCR the Underwriter will maintain and use his independent calculation of NOI unless the Applicant's EGI, total expenses, and NOI are each within 5% of the Underwriter's estimates.

(4) Debt Coverage Ratio. Debt Coverage Ratio is calculated by dividing Net Operating Income by the sum of loan principal and interest for all permanent sources of funds. Loan principal and interest, or "Debt Service," is calculated based on the terms indicated in the submitted commitments for financing. Terms generally include the amount of initial principal, the interest rate, amortization period, and repayment period. Unusual financing structures and their effect on Debt Service will also be taken into consideration.

(A) Interest Rate. The interest rate used should be the rate documented in the commitment letter.

(i) Commitments indicating a variable rate must provide a detailed breakdown of the component rates comprising the all-in rate. The commitment must also state the lender's underwriting interest rate, or the Applicant must submit a separate statement executed by the lender with an estimate of the interest rate as of the date of the statement.

(ii) The maximum rate allowed for a competitive application cycle is evaluated by the Director of the Department's division responsible for Credit Underwriting Analysis Reports and posted to the Department's web site prior to the close of the application acceptance period. Historically this maximum acceptable rate has been at or below the average rate for 30-year U.S. Treasury Bonds plus 400 basis points.

(B) Amortization Period. The Department generally requires an amortization of not less than 30 years and not more than 50 years or an adjustment to the amortization structure is evaluated and recommended. In non-Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period.

(C) Repayment Period. For purposes of projecting the DCR over a 30-year period for Developments with permanent financing structures with balloon payments in less than 30 years, the Underwriter will carry forward Debt Service calculated based on a full amortization and the interest rate stated in the commitment.

(D) Acceptable Debt Coverage Ratio Range. The initial acceptable DCR range for all priority or foreclosable lien financing plus the Department's proposed financing falls between a minimum of 1.10 to a maximum of 1.30. HOPE VI and USDA Rural Development transactions may underwrite to a DCR less than 1.10 based upon documentation of acceptance from the lender.

(i) For Developments other than HOPE VI and USDA Rural Development transactions, if the DCR is less than the minimum, the recommendations of the Report are conditioned upon a reduced debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause.

(I) A reduction of the interest rate or an increase in the amortization period for TDHCA funded loans;

(II) A reclassification of TDHCA funded loans to reflect grants, if permitted by program rules;

(III) A reduction in the permanent loan amount for non-TDHCA funded loans based upon the rates and terms in the permanent loan commitment letter as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) If the DCR is greater than the maximum, the recommendations of the Report are conditioned upon an increase in the debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause.

(I) A reclassification of TDHCA funded grants to reflect loans, if permitted by program rules;

(II) An increase in the interest rate or a decrease in the amortization period for TDHCA funded loans;

(III) An increase in the permanent loan amount for non-TDHCA funded loans based upon the rates and terms in the permanent loan commitment letter as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit Developments, a reduction in the recommended Tax Credit allocation may be made based on the gap/DCR method described in subsection (c)(2) of this section.

(iv) Although adjustments in Debt Service may become a condition of the Report, future changes in income, expenses, and financing terms could allow for an acceptable DCR.

(5) Long Term Feasibility. The Underwriter will evaluate the long term feasibility of the Development by creating a 30-year operating proforma.

(A) A 3% annual growth factor is utilized for income and a 4% annual growth factor is utilized for expenses.

(B) The base year projection utilized is the Underwriter's EGI, expenses, and NOI unless the Applicant's EGI, total expenses, and NOI are each within 5% of the Underwriter's estimates.

(C) The DCR should remain above a 1.10 and a continued positive Cash Flow should be projected for the initial 30-year period in order for the Development to be characterized as feasible for the long term. DCR will be calculated based on the guidelines stated in subsection (d)(4) of this section.

(D) Any Development with a 30-year proforma, used in the underwriting analysis, reflecting cumulative Cash Flow over the first fifteen years as insufficient to repay the projected amount of deferred developer fee , amortized in irregular payments at 0% interest, is characterized as infeasible. An infeasible Development will not be recommended for funding unless the Underwriter can determine a plausible alternative feasible financing structure and conditions the recommendation(s) in the Report accordingly.

(e) Development Costs. The Development's need for permanent funds and, when applicable, the Development's Eligible Basis is based upon the projected total development costs. The Department's estimate of the total development cost will be based on the Applicant's project cost schedule to the extent that it can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For new construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's total development cost is within 5% of the Underwriter's estimate. In the case of a rehabilitation Development, the Underwriter may use a lower tolerance level due to the reliance upon the PCA. If the Applicant's total development cost is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's total cost estimate.

(1) Acquisition Costs. The proposed acquisition price is verified with the fully executed site control document(s) for the entire proposed site.

(A) Excess Land Acquisition. Where more land is being acquired than will be utilized for the site and the remaining acreage is not being utilized as permanent green space, the value ascribed to the proposed Development will be prorated from the total cost reflected in the site control document(s). An appraisal or tax assessment value may be tools that are used in making this determination; however, the Underwriter will not utilize a prorated value greater than the total amount in the site control document(s).

(B) Identity of Interest Acquisitions.

(i) The acquisition will be considered an identity of interest transaction when an Affiliate of, a Related Party to, or any owner at any level of the Development Team

(I) is the current owner in whole or in part of the proposed property, or

(II) was the owner in whole or in part of the proposed property during any period within the 36 months prior to the first day of the Application Acceptance Period.

(ii) In all identity of interest transactions the Applicant is required to provide the additional documentation identified in §50.9(h)(7)(A) of this title to support the transfer price to be used in the underwriting analysis.

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed

(I) the original acquisition cost listed in the submitted settlement statement or, if a settlement statement is not available, the original asset value listed in the most current audited financial statement for the identity of interest owner, or

(II) the "as-is" value conclusion in the submitted appraisal.

(C) Acquisition of Buildings for Tax Credit Properties. In order to make a determination of the appropriate building acquisition value, the Applicant will provide and the Underwriter will utilize an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §1.34 of this subchapter. The value of the improvements are the result of the difference between the as-is appraised value less the land value. The Underwriter may alternatively prorate the actual or identity of interest sales price based upon a lower calculated improvement value over the as-is value provided in the appraisal, so long as the resulting land value utilized by the Underwriter is not less than the land value indicated in the appraisal or tax assessment.

(2) Off-Site Costs. Off-Site costs are costs of development up to the site itself such as the cost of roads, water, sewer and other utilities to provide the site with access. All off-site costs must be well documented and certified by a Third Party engineer on the required application form.

(3) Site Work Costs. Project site work costs exceeding $7,500 per Unit must be well documented and certified by a Third Party engineer on the required application form. In addition, for Applicants seeking Tax Credits, documentation in keeping with §50.9(i)(6)(G) of this title will be utilized in calculating eligible basis.

(4) Direct Construction Costs. Direct construction costs are the costs of materials and labor required for the building or rehabilitation of a Development.

(A) New Construction. The Underwriter will use the Marshall and Swift Residential Cost Handbook and historical final cost certifications of all previous housing tax credit allocations to estimate the direct construction cost for a new construction Development. If the Applicant's estimate is more than 5% greater or less than the Underwriter's estimate, the Underwriter will attempt to reconcile this concern and ultimately identify this as a cost concern in the Report.

(i) The "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook, based upon the details provided in the application and particularly site and building plans and elevations will be used to estimate direct construction costs. If the Development contains amenities not included in the Average Quality standard, the Department will take into account the costs of the amenities as designed in the Development.

(ii) If the difference in the Applicant's direct cost estimate and the direct construction cost estimate detailed in clause (i) of this subparagraph is more than 5%, the Underwriter shall also evaluate the direct construction cost of the Development based on acceptable cost parameters as adjusted for inflation and as established by histori-

cal final cost certifications of all previous housing tax credit allocations for:

(I) the county in which the Development is to be located, or

(II) if cost certifications are unavailable under subclause (I) of this clause, the uniform state service region in which the Development is to be located.

(B) Rehabilitation Costs. In the case where the Applicant has provided a PCA which is inconsistent with the Applicant's figures as proposed in the development cost schedule, the Underwriter may request a supplement executed by the PCA provider supporting the Applicant's estimate and detailing the difference in costs. If said supplement is not provided or the Underwriter determines that the reasons for the initial difference in costs are not well-documented, the Underwriter utilizes the initial PCA estimations in lieu of the Applicant's estimates.

(5) Hard Cost Contingency. All contingencies identified in the Applicant project cost schedule will be added to Hard Cost Contingency with the total limited to the guidelines detailed in this paragraph. Hard Cost Contingency is limited to a maximum of 5% of direct costs plus site work for new construction Developments and 10% of direct costs plus site work for rehabilitation Developments. For tax credit Developments, the percentage is applied to the sum of the eligible direct construction costs plus eligible site work costs in calculating the eligible contingency cost. The Applicant's figure is used by the Underwriter if the figure is less than 5%.

(6) Contractor Fee Limits. Contractor fees are limited to 6% for general requirements, 2% for contractor overhead, and 6% for contractor profit. The percentages are applied to the sum of the direct construction costs plus site work costs. For tax credit Developments, the percentages are applied to the sum of the eligible direct construction costs plus eligible site work costs in calculating the eligible contractor fees. Minor reallocations to make these fees fit within these limits may be made at the discretion of the Underwriter. For Developments also receiving financing from TX-USDA-RHS, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or TX-USDA-RHS requirements.

(7) Developer Fee Limits. For Tax Credit Developments, the development cost associated with developer fees and Development Consultant (also known as Housing Consultant) fees included in Eligible Basis cannot exceed 15% of the project's Total Eligible Basis less developer fees, as defined in the QAP. Developer fee claimed must be proportionate to the work for which it is earned. In the case of an identity of interest transaction requesting acquisition Tax Credits, no developer fee attributable to acquisition of the Development will be included in Eligible Basis. For non-Tax Credit Developments, the percentage remains the same but is based upon total development costs less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in subsection (f)(8) of this section, reserves, and any other identity of interest acquisition cost.

(8) Financing Costs. Eligible construction period financing is limited to not more than one year's fully drawn construction loan funds at the construction loan interest rate indicated in the commitment. Any excess over this amount is removed to ineligible cost and will not be considered in the determination of developer fee.

(9) Reserves. The Department will utilize the terms proposed by the syndicator or lender as described in the commitment letter(s) or the amount described in the Applicant's project cost schedule if it is within the range of two to six months of stabilized operating expenses less management fees plus debt service.

(10) Other Soft Costs. For Tax Credit Developments all other soft costs are divided into eligible and ineligible costs. Eligible costs are defined by Internal Revenue Code but generally are costs that can be capitalized in the basis of the Development for tax purposes. Ineligible costs are those that tend to fund future operating activities. The Underwriter will evaluate and accept the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Internal Revenue Code. If the Underwriter questions the eligibility of any soft costs, the Applicant is given an opportunity to clarify and address the concern prior to removal from Eligible Basis.

(f) Developer Capacity. The Underwriter will evaluate the capacity of the Person(s) accountable for the role of the Developer to determine their ability to secure financing and successfully complete the Development. The Department will review financial statements, and personal credit reports for those individuals anticipated to guarantee the completion of the Development.

(1) Credit Reports. The Underwriter will characterize the Development as "high risk" if the Applicant, General Partner, Developer, anticipated Guarantor or Principals thereof have a credit score which reflects a 40% or higher potential default rate.

(2) Financial Statements of Principals. The Applicant, Developer, any principals of the Applicant, General Partner, and Developer and any Person who will be required to guarantee the Development will be required to provide a signed and dated financial statement and authorization to release credit information in accordance with the Department's program rules.

(A) Individuals. The Underwriter will evaluate and discuss financial statements for individuals in a confidential portion of the Report. The Development may be characterized as "high risk" if the Developer, anticipated Guarantor or Principals thereof is determined to have limited net worth or significant lack of liquidity.

(B) Partnerships and Corporations. The Underwriter will evaluate and discuss financial statements for partnerships and corporations in the Report. The Development may be characterized as "high risk" if the Developer, anticipated Guarantor or Principals thereof is determined to have limited net worth or significant lack of liquidity.

(C) If the Development is characterized as a high risk for either lack of previous experience as determined by the TDHCA division responsible for compliance or a higher potential default rate is identified as described in paragraph (1) or (2) of this subsection, the Report must condition any potential award upon the identification and inclusion of additional Development partners who can meet the Department's guidelines.

(g) Other Underwriting Considerations. The Underwriter will evaluate numerous additional elements as described in subsection (b) of this section and those that require further elaboration are identified in this subsection.

(1) Floodplains. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or

(B) The Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain; or

(C) The Development must be designed to comply with the QAP, as proposed.

(2) Inclusive Capture Rate. The Underwriter will not recommend the approval of funds to new Developments requesting funds if the anticipated inclusive capture rate, as defined in §1.33 of this subchapter, exceeds 25% for the Primary Market unless:

(A) The Developments is classified as a Rural Development according to the QAP, as proposed, in which case an inclusive capture rate of 100% is acceptable; or

(B) The Development is strictly targeted to the elderly or special needs populations, in which case an inclusive capture rate of 100% is acceptable; or

(C) The Development is comprised of Affordable Housing which replaces previously existing substandard Affordable Housing within the same Primary Market Area on a Unit for Unit basis, and which gives the displaced tenants of the previously existing Affordable Housing a leasing preference, in which case an inclusive capture rate is not applicable.

(3) The Underwriter will identify in the report any Developments funded or known and anticipated to be eligible for funding within one linear mile of the subject.

(4) Supportive Housing. The unique development and operating characteristics of Supportive Housing Developments may require special consideration in the following areas:

(A) Operating Income. The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50% AMI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development.

(B) Operating Expenses. A Supportive Housing Development may have significantly higher expenses for payroll, security, resident support services, or other items than typical Affordable Housing Developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments provided by the Applicant or otherwise available to the Underwriter.

(C) DCR and Long Term Feasibility. Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional debt. Applicants must provide evidence of sufficient financial resources to offset any projected 30-year cumulative negative cash flows. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of the following: executed subsidy commitment(s), set-aside of Applicant's financial resources, to be substantiated by an audited financial statement evidencing sufficient resources, and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities.

(D) Development Costs. For Supportive Housing that is styled as efficiencies, the Underwriter may use "Average Quality" dormitory costs from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the application, as a base cost in evaluating the reasonableness of the Applicant's direct construction cost estimate for new construction Developments.

(h) Work Out Development. Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

§1.36. Property Condition Assessment Guidelines.

(a) General Provisions. The objective of the Property Condition Assessment (the PCA) is to provide cost estimates for repairs, replacements, or new construction which are: immediately necessary; proposed by the developer; and expected to be required throughout the term of the regulatory period. The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018)" except as provided for in subsections (b) and (c) of this section. The PCA must include discussion and analysis of the following:

(1) Useful Life Estimates. For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived.

(2) Code Compliance. The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Housing Sponsor or Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject property.

(3) Program Rules. The PCA should assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, particular consideration being given to accessibility requirements, the Department's Housing Quality Standards, and any scoring criteria for which the Applicant may claim points.

(4) Cost Estimates for Repair and Replacement. It is the responsibility of the Housing Sponsor or Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the development cost schedule submitted as an exhibit of the Application.

(A) Immediately Necessary Repairs and Replacement. Systems or components which are expected to have a remaining useful life of less than one year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards should be considered immediately necessary repair and replacement. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional repair, replacement, or

new construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, citing the basis or the source from which such cost estimate is derived.

(C) Expected Repair and Replacement Over Time. The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the property. The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCA must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(b) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

(1) Fannie Mae's criteria for Physical Needs Assessments,

(2) Federal Housing Administration's criteria for Project Capital Needs Assessments,

(3) Freddie Mac's guidelines for Engineering and Property Condition Reports,

(4) TX-USDA-RHS guidelines for Capital Needs Assessment, or

(5) Standard and Poor's Property Condition Assessment Criteria: Guidelines for Conducting Property Condition Assessments, Multifamily Buildings.

(c) The Department may consider for acceptance reports prepared according to other standards which are not specifically named above in subsection (b) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(d) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to TDHCA as the client. Copies of reports provided to TDHCA which were commissioned by other financial institutions should address TDHCA as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to TDHCA. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA should be signed and dated by the Third Party report provider not more than six months prior to the date of the application.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2006.

TRD-200600209
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 1, 2006
Proposal publication date: September 2, 2005
For further information, please call: (512) 475-4595

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 1. PRACTICE AND PROCEDURE

SUBCHAPTER H. DECISION

16 TAC §1.144

The Railroad Commission of Texas adopts amendments to §1.144, relating to Oral Argument Before the Commission, without changes to the version published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6159). The Commission adopts the amendments to bring the Commission's practice and procedure rule concerning oral argument in line with the Railroad Commission Policy on Public Participation in Open Meetings, adopted on September 7, 2005.

The amendments add detail and specificity to the rule in order to inform and guide persons who wish to present oral argument before the Commission in open meeting. Changes in subsection (a) provide that, prior to the final disposition of any proceeding, any party may request oral argument before the Commission. This request must be made by separate pleading or as part of a party's exceptions, replies to exceptions, brief, reply brief, motion for rehearing, or reply to a motion for rehearing. A party may not orally request the opportunity to make oral argument at a Commission open meeting.

Subsection (b) provides that oral argument may be allowed at the discretion of the Commission. Failure of the Commission to grant a request for oral argument is deemed a denial of the request.

Subsection (c) provides that the Commission may request that parties to any proceeding present oral argument.

Subsection (d) states that if the Commission will hear oral argument, the Commission will determine the date, time, and order of the oral argument. The Commission may request that parties focus their arguments on particular issues in the case; determine the sequence in which parties will proceed, and which party, if any, may close; impose time limits on all speakers; limit or exclude unduly repetitious arguments and presentations; require that one representative present the information and position of closely aligned persons or entities; and set deadlines for filing additional information or briefs in the case.

Subsection (e) provides that, in order to ensure that persons needing special equipment or assistance are provided with the equipment or assistance, persons who have a special request concerning the presentation of comments or oral argument should contact the secretary of the Commission at least 48 hours prior to the start of the open meeting. However, failure to make such a request will not preclude a person from providing comment or oral argument. A special request includes presentation of video or audio recordings; use of audio or visual aids; and/or interpreters or other auxiliary aids, including accommodations for the disabled.

Subsection (f) provides that the Commission will accept unsolicited comments from elected officials when they are acting in their official capacities.

The Commission received no comments on the proposed amendments.

The Commission adopts the amendments under Texas Revised Civil Statutes, Article 6447, which authorizes the Commissioners to make all rules necessary for their government and proceedings; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Statutory authority: Texas Revised Civil Statutes, Article 6447, and Texas Government Code, §2001.004.

Cross-reference to statute: Texas Revised Civil Statutes, Article 6447, and Texas Government Code, §2001.004.

Issued in Austin, Texas, on January 10, 2006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2006.

TRD-200600134
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: January 30, 2006
Proposal publication date: September 30, 2005
For further information, please call: (512) 475-1295

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CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.16

The Railroad Commission of Texas adopts amendments to §3.16, relating to Log and Completion or Plugging Report, with one minor change to the version published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6541).

The Commission adopts the amendments pursuant to the provisions of Texas Natural Resources Code, §§91.551 - 91.556, relating to filing and availability of electric logs. The amendments are necessary to implement changes in Texas Natural Resources Code, §§91.551 - 91.554 and §91.556, made by House Bill (HB) 484, 79th Legislature, Regular Session (2005), effective September 1, 2005.

The amendments add new subsection (a) to §3.16, which provides definitions. The definitions of "basic electric log," "drilling operation," "operator," and "well" are consistent with definitions in Texas Natural Resources Code, §91.551, as amended by HB 484. Former subsection (a) is deleted, but its provisions, with some amendments, are adopted in new subsections (b) and (c). New subsection (b) requires that completion reports be filed within 30 days after the completion of a well or within 90 days after the date on which the drilling operation is completed, whichever is earlier. Amended completion reports must be filed within 30 days of any physical changes made to a well, such as any change in perforations, or openhole or casing records, and plugging reports must be filed for a well that is a dry hole within 30 days after the well is plugged.

New subsection (c) requires, subject to the confidentiality provisions of new subsection (d), that operators file basic electric logs not later than the 90th day after the date a drilling operation is completed. This is consistent with Texas Natural Resources Code, §91.552(a), as amended by HB 484. "Basic electric log" is defined in new subsection (a) as a density, sonic, or resistivity (except dip meter) log run over the entire wellbore. However, new subsection (c) provides that in the event a basic electric log as defined in new subsection (a) has not been run, subject to the Commission's approval, an operator shall file a lithology log or gamma ray log of the entire wellbore. In addition, new subsection (c) provides that in the event no log has been run over the entire wellbore, subject to the Commission's approval, an operator shall file the log which is the most nearly complete of the logs run.

Former subsection (b) is redesignated as subsection (d) and is amended to clarify that this subsection applies to requests for delayed filing of logs based on confidentiality and to clarify the time periods in which such requests must be made.

Former subsection (c) is redesignated as subsection (e) with amendments to clarify that this subsection applies to sanctions that may be imposed if an operator fails to file either a completion report or log as required by §3.16, as amended. New subsection (e) is consistent with current Commission policy.

The amendments are necessary to conform §3.16 to changes in Texas Natural Resources Code, §§91.551 - 91.554 and §91.556, made by HB 484. These amendments clarify the duty of operators to timely file completion and plugging reports and basic electric logs. Former subsection (a) of §3.16 required that a completion report be filed within 30 days after the completion of a well and that a basic electric log be attached to the completion report. However, former §3.16 contained no clear standard as to when a well is "completed," and this caused some operators to delay unreasonably the filing of completion reports and logs. This, in turn, resulted in some requests for delayed filing of logs based on confidentiality for periods of time beyond that contemplated by current §3.16.

Timely filing of completion reports and logs is deemed important to the accomplishment of the Commission's mission. Information in completion reports assists the Commission in making a determination that a well has been drilled, cased, cemented, and otherwise equipped in conformity with Commission rules to protect usable quality water. Completion information is also necessary to enable the Commission's Field Operations staff to determine the manner in which a well should be plugged or reworked to solve a particular wellbore problem that may pose a threat of pollution of usable quality water or other hazard to the public health and safety. Completion reports also provide test information required by Commission rules, are used to create a well record in

the Commission's database, and provide information necessary for the setting of well allowables.

Logs filed by operators are used by Commission staff for multiple purposes, including, among others, new or proper field designations, discovery allowable determinations, two-factor allocation determinations, high cost gas determinations, determinations of formation characteristics relative to fluid injection or storage wells, and determinations as to whether wells have been properly cased and cemented. Logs filed with the Commission also provide information useful to the industry regulated by the Commission for purposes of reservoir engineering or geological assessment and provide a source of information potentially useful to the Commission in making determinations as to well density and well spacing in field rules and/or applications for exceptions to well density or well spacing requirements.

New subsection (b) of §3.16 clarifies that completion reports are required to be filed within 30 days after the completion of a well or within 90 days after the date on which the drilling operation is completed, whichever is earlier. New subsection (c) will require that, subject to a request for delayed filing based on confidentiality, basic electric logs be filed not later than the 90th day after the date on which a continuous effort to drill or deepen a wellbore has ended. The definition of "Basic electric log" in new subsection (a) is adopted because density, sonic, or resistivity (except dip meter) logs are the type of logs that provide the most useful information for the Commission's purposes. The intent of the amendments is that one of these types of logs be filed if such a log has been run. Lithology logs and gamma ray logs are less useful, but, subject to the Commission's approval, new subsection (c) will allow the filing of such logs in the event that no density, sonic, or resistivity log has been run.

The Commission received comments from one association, Texas Independent Producers & Royalty Owners Association ("TIPRO") and from one operator, XTO Energy ("XTO"). TIPRO first suggested that definitions of "operator," "well," and "drilling operation" in paragraphs (2) through (4) of proposed §3.16(a) be changed to conform to definitions of the same or similar terms in other Commission rules. The Commission adopts §3.16(a)(2) through (4) without change from the proposed version, because the definitions of "operator," "well," and "drilling operation" are the definitions adopted by the Legislature in Texas Natural Resources Code, §91.551(a), as amended by HB 484, effective September 1, 2005, relating to Subchapter M, Chapter 91, requirements for filing of logs associated with well completions.

TIPRO also suggested that proposed §3.16(b) be changed in order to clarify that amended completion and plugging reports must be filed within 30 days after the end of the work on a well bore. More particularly, TIPRO suggested that proposed §3.16(b) be changed to provide that amended completion reports must be filed within 30 days of any physical changes made to the well, such as perforations, casing strings, or open hole alterations. Although the portion of §3.16(b) relating to filing of amended completion reports, as proposed, did not change the corresponding provision of former §3.16(a), the Commission agrees that the new language suggested by TIPRO, with minor modification, clarifies §3.16(b) and does not materially change the corresponding requirements of former §3.16(a) or current Commission practice. The Commission adopts §3.16(b) with changes to incorporate TIPRO's suggested language, with a minor modification. The Commission has made a minor change to TIPRO's suggested language to make it consistent with current Commission practice regarding the filing of amended completion reports. As adopted, §3.16(b) provides that the operator of a well shall file an amended completion report within 30 days of any physical changes made to the well, such as any change in perforations, or openhole or casing records.

TIPRO further suggested that proposed §3.16(d) be changed to provide that an operator who fails to file timely a request for delayed filing of a log based on confidentiality may nonetheless request such delayed filing, subject to the Commission's approval and the right of the Commission to assess a late filing fee or to initiate penalty action prior to approval. The Commission declines to adopt this suggested change because Texas Natural Resources Code, §91.553, as amended by HB 484, effective September 1, 2005, does not permit it. Pursuant to §91.553(b), a request for delayed log filing for the initial one year confidentiality period must be filed not later than 90 days after a drilling operation is completed. Under §91.553(c), a request for delayed log filing for an additional two year confidentiality period must be made before the initial one year confidentiality period has expired. Under §91.553(d), a request for delayed log filing for a further two year confidentiality period in the case of a well submerged in state water must be filed before the expiration of the previous two year confidentiality period. Pursuant to §91.553(f), an operator who fails to timely file a request under §91.553(b), (c), or (d) must file the log with the Commission immediately after the conclusion of the period for filing the request. Accordingly, the Commission adopts §3.16 without changes.

XTO generally supported the proposed amendments, but suggested that the Commission consider extending confidentiality to logs filed to support applications for Texas severance tax incentive certification. The confidentiality concerns expressed by XTO may warrant further study, but they are beyond the scope of this rulemaking, which concerns required log filing associated with well completions. No notice has been provided that the Commission would consider adoption of rules relating to confidentiality of logs filed in support of applications for Texas severance tax incentive certification. Accordingly, the Commission adopts §3.16 without changes to address the concerns expressed by XTO.

The Commission adopts the amendments to §3.16 pursuant to Texas Natural Resources Code, §§91.551 - 91.556, relating to electric logs, and §§81.051 - 81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission. Texas Natural Resources Code, §§91.551 - 91.556, as amended by HB 484, effective September 1, 2005, authorize the Commission to require the filing of electric logs. In addition, Texas Natural Resources Code, §§85.201 - 85.202, require the Commission to adopt and enforce rules and orders for the conservation and prevention of waste of oil and gas, and specifically for drilling of wells, preserving a record of the drilling of wells, and requiring records to be kept and reports to be made. Texas Natural Resources Code, §§86.041 - 86.042, give the Commission broad discretion in administering the provisions of Chapter 86 of the Code, and authorize the Commission, generally, to adopt any rule or order necessary to effectuate the provisions and purposes of this Chapter. The Commission is required to adopt and enforce rules and orders to conserve and prevent the waste of gas, provide for drilling wells and preserving a record of them, requiring wells to be drilled and operated in a manner that prevents injury to adjoining property, and requiring records to be kept and reports to be made.

In addition, Texas Natural Resources Code, §§141.011 - 141.012, authorize the Commission to regulate the exploration, development, and production of geothermal energy and associated resources and to make and enforce rules associated therewith. Pursuant to Texas Water Code, §26.131, the Commission is solely responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from activities associated with the exploration, development, and production of oil or gas or geothermal resources. Pursuant to Texas Water Code, §§27.031 - 27.032 and §27.034, the Commission has authority to permit disposal wells to dispose of oil and gas waste, to require applicants for disposal well permits to furnish any information necessary to the discharge of the Commission's duties under Chapter 27, and to adopt rules required for the performance of the Commission's duties under this Chapter. Texas Natural Resources Code, §91.101, provides that to prevent the pollution of surface or subsurface water in the state, the Commission shall adopt and enforce rules relating to, among other things, the drilling of exploratory wells and oil and gas wells or any purpose in connection with them and the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the Commission.

Texas Natural Resources Code, §§81.051, 81.052, 85.201, 85.202, 86.041, 86.042, 91.101, 91.551, 91.552. 91.553. 91.554. 91.555, 91.556, 141.011, and 141.012, and Texas Water Code, §§26.131, 27.031, 27.032, and 27.034, are affected by the adopted amendments.

Statutory Authority: Texas Natural Resources Code, §§81.051, 81.052, 85.201, 85.202, 86.041, 86.042, 91.101, 91.551, 91.552. 91.553. 91.554. 91.555, 91.556, 141.011, and 141.012, and Texas Water Code, §§26.131, 27.031, 27.032, and 27.034.

Cross-reference to statutes: Texas Natural Resources Code, §§81.051, 81.052, 85.201, 85.202, 86.041, 86.042, 91.101, 91.551, 91.552. 91.553. 91.554. 91.555, 91.556, 141.011, and 141.012, and Texas Water Code, §§26.131, 27.031, 27.032, and 27.034.

Issued in Austin, Texas, on January 10, 2006.

§3.16. Log and Completion or Plugging Report.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Basic electric log--A density, sonic, or resistivity (except dip meter) log run over the entire wellbore.

(2) Drilling operation--A continuous effort to drill or deepen a wellbore for which the commission has issued a permit.

(3) Operator--A person who assumes responsibility for the regulatory compliance of a well as shown by a form the person files with the commission and the commission approves.

(4) Well--A well drilled for any purpose related to exploration for or production or storage of oil or gas or geothermal resources, including a well drilled for injection of fluids to enhance hydrocarbon recovery, disposal of produced fluids, disposal of waste from exploration or production activity, or brine mining.

(b) Completion and plugging reports. The operator of a well shall file with the commission the appropriate completion report within 30 days after completion of the well or within 90 days after the date on which the drilling operation is completed, whichever is earlier. The operator of a well shall file with the Commission an amended completion report within 30 days of any physical changes made to the well, such as any change in perforations, or openhole or casing records. If the well is a dry hole, the operator shall file with the commission an appropriate plugging report within 30 days after the well is plugged.

(c) Basic electric logs. Except as otherwise provided in this section, not later than the 90th day after the date a drilling operation is completed, the operator shall file with the commission a legible and unaltered copy of a basic electric log, except that where a well is deepened, a legible and unaltered copy of a basic electric log shall be filed if such log is run over a deeper interval than the interval covered by a basic electric log for the well already on file with the commission. In the event a basic electric log, as defined in this section, has not been run, subject to the commission's approval, the operator shall file a lithology log or gamma ray log of the entire wellbore. In the event no log has been run over the entire wellbore, subject to the commission's approval, the operator shall file the log which is the most nearly complete of the logs run.

(d) Delayed filing based on confidentiality. Each log filed with the commission shall be considered public information and shall be available to the public during normal business hours. If the operator of a well desires a log to be confidential, on or before the 90th day after the date a drilling operation is completed, the operator must submit a written request for a delayed filing of the log. When filing such a request, the operator must retain the log and may delay filing such log for one year beginning from the date the drilling operation was completed. The operator of such well may request an additional filing delay of two years, provided the written request is filed prior to the expiration date of the initial confidentiality period. If a well is drilled on land submerged in state water, the operator may request an additional filing delay of two years so that a possible total delay of five years may be obtained. A request for the additional two year filing delay period must be in writing and be filed with the commission prior to the expiration of the first two year filing delay. Logs must be filed with the commission within 30 days after the expiration of the final confidentiality period, except that an operator who fails to timely file with the commission a written request under this subsection for an extension of the period of log confidentiality shall file the log with the commission immediately after the conclusion of the period for filing the request.

(e) Sanctions. If an operator fails to file a completion report or log in accordance with the provisions of this section, the commission may refuse to assign an allowable to a well, set the allowable for such well at zero, and/or initiate penalty action pursuant to the Texas Natural Resources Code, Title 3.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2006.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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Proposal publication date: October 14, 2005
For further information, please call: (512) 475-1295

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CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1

The Commission adopts amendments to §8.1, relating to General Applicability and Standards, without changes from the November 11, 2005, issue of the *Texas Register* (30 TexReg 7337). Section 8.1(b) concerns minimum safety standards and adopts by reference the United States Department of Transportation's (USDOT) pipeline safety standards found in 49 U.S.C. §60101, *et seq*.; 49 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards; 49 U.S.C. §60101, *et seq*.; 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline; and 49 CFR Part 199, Drug and Alcohol Testing. The rule previously adopted the federal pipeline safety standards as of September 14, 2004; the adopted amendment will show this date as July 1, 2005. The federal safety rule amendments adopted by reference are summarized in the following paragraphs.

Under the USDOT's new Pipeline and Hazardous Materials Safety Administration (PHMSA), in accordance with the Norman Y. Mineta Research and Special Programs Improvement Act which reorganized the Department's pipeline and hazardous materials safety programs into the new PHMSA, the amendments, published at 70 Federal Register (FR) 11135, revise all references to the former Research and Special Programs Administration (RSPA) in 49 CFR Parts 190 through 199 to reflect the creation of PHMSA. The final rule also updated the Office of Pipeline Safety's internet and mailing addresses, docket procedures, titles, section numbers, penalty consideration and cap adjustments, terminology, and other changes conforming Part 190 with the Pipeline Safety Improvement Act of 2002. The amendments also reflect the changed organizational posture of the agency and update the Part 190 enforcement procedures to reflect current public law. The final rule did not impose any new operating requirements on pipeline owners and operators. The final rule was effective March 8, 2005.

USDOT's Amendment Nos. 192-99 and 195-83, published at 70 FR 35041, corrects a final rule published by the Pipeline and Hazardous Materials Safety Administration (PHMSA) on May 19, 2005 (70 FR 28833). That final rule amended requirements for pipeline operators in 49 CFR Parts 192 and 195 to develop and implement public awareness programs and incorporate by reference the guidelines of the American Petroleum Institute (API) Recommended Practice (RP) 1162. The document was assigned the amendment numbers 192-100 and 195-84, which were already assigned to different amendments. The final rule corrects the amendment numbers and the language amending Part 192 so that it is consistent with Part 195. The effective date was June 20, 2005.

Amendment Nos. 192-101 and 195-85, published at 70 FR 28833, amend the requirements for pipeline operators to develop and implement public awareness (also known as public education) programs. The changes are part of PHMSA's Office of Pipeline Safety's broad pipeline communications initiative to promote pipeline safety. Promoting pipeline safety requires enhanced communications by pipeline operators with the public to increase public awareness of pipeline operations and safety issues. The amendments for developing and implementing public awareness programs address the requirements of the Pipeline Safety Improvement Act of 2002 and incorporate by reference the guidelines provided in API Recommended Practice 1162, "Public Awareness Programs for Pipeline Operators." The effective date for this final rule was June 20, 2005.

The Commission finds that its adoption of Amendment Nos. 192-99 and 195-83, and Amendment Nos. 192-101 and 195-85, meets the requirements of Section 17 of House Bill (HB) 2161, 79th Legislature, Regular Session (2005), which states that the Commission may not adopt safety standards under Texas Utilities Code, §121.201(a) or Texas Natural Resources Code, §17.012(a), as amended by HB 2161, until the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation adopts the rules published at 69 FR 35279 (to be codified at 49 CFR Parts 192 and 195, as proposed June 3, 2004) or other rules pertaining to public education programs for hazardous liquid and gas pipeline operators.

Amendment No. 192-94, published at 70 FR 3147 by the Research and Special Programs Administration (RSPA), is a direct final rule that makes a minor editorial correction to the definition of "transmission line" in the federal safety regulations for natural gas pipelines. The correction is intended to clarify that gathering lines are excluded from the definition of transmission line. Because gathering lines have never been included in the definition of transmission line, the correction will not result in any substantive change in the definition. The effective date was May 6, 2005.

Amendment Nos. 192-100 and 195-84, published at 70 FR 10332, adopt a direct final rule from RSPA's Office of Pipeline Safety requiring operators of gas and hazardous liquid pipelines to conduct programs to qualify individuals who perform certain safety-related tasks on pipelines. Congress addressed these programs through an amendment to the federal pipeline safety law (49 U.S.C. Chap. 601). In accordance with that amendment, the direct final rule codifies the new program requirements concerning personnel training, notice of program change, government review and verification of programs, and use of on-the-job performance as a qualification method. The direct final rule became effective July 1, 2005.

The Commission received no comments on the proposed amendments.

The Commission adopts the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §117.012, which requires the Commission to adopt rules that include safety standards for and practices applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquid or carbon dioxide pipeline facilities; and to adopt rules regarding public education and awareness concerning hazardous liquid or carbon dioxide pipeline facilities and community liaison for the purpose of responding to an emer-

gency concerning a hazardous liquid or carbon dioxide pipeline facility; Texas Utilities Code, §§121.201 - 121.210, as amended by HB 2161, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated §60101, *et seq*.; and HB 2161, Section 17, which directs that the Railroad Commission of Texas may not adopt safety standards under Texas Utilities Code, §121.201(a), or Texas Natural Resources Code, §117.012(a), as amended by HB 2161, until the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation adopts the rules published at 69 Federal Register 35279 (2004) (to be codified at 49 CFR Parts 192 and 195) (proposed June 3, 2004) or other rules pertaining to public education programs for hazardous liquid and gas pipeline operators.

Texas Natural Resources Code, §§81.051, 81.052, and 117.012; Texas Utilities Code, §§121.201 - 121.210; and 49 United States Code Annotated §60101, *et seq*., are affected by the adopted amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 117.012; Texas Utilities Code, §§121.201 - 121.210; and 49 United States Code Annotated §60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated Chapter 601.

Issued in Austin, Texas, on January 10, 2006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Railroad Commission of Texas
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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 61. COMBATIVE SPORTS

The Texas Department of Licensing and Regulation ("Department") adopts amendments to 16 Texas Administrative Code, §§61.10, 61.20, 61.30, 61.40 - 61.44, 61.46, 61.80, 61.105, 61.107, 61.108, 61.110, and 61.112, new §§61.21 - 61.24, 61.49, and 61.106, and the repeal of §61.21 and §61.109, regarding the combative sports program, without changes to the proposed text as published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7649) and will not be republished. Sections 61.47, 61.48, and 61.111 are adopted with changes to the proposed text as published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7649).

These rules are necessary to implement changes to the program brought about by Senate Bill 796 adopted by the 79th Legislature, and in response to the Department's rule review of Chapter 61, pursuant to Government Code, §2001.039 where the Commission determined that, other than implementing statutory changes, the rules should be maintained, but clarified, and brought into closer compliance with statutory provisions.

Section 61.10, Definitions, is amended to delete the definitions of "amateur," "bout/or contest," "Combative Sports," "Commission," "Event," and "Promoter" because these terms are defined in the Code. The definition of "shoot wrestling/fighting..." is also deleted as those particular martial arts are now included in "mixed martial arts." Paragraphs are renumbered as needed.

The definition of "contestant" is amended to specifically include professional combative sports contestants as that phrase is employed throughout the rules. A new definition for "knock-down" is added. The definition of "license" is expanded to include registrations. The definition of "manager" is amended to make it clear that the term only applies to professional combative sports contestants.

The definition of the term "matchmaker" is amended for clarification. The definition of "purse" is amended to refer to an event rather than a contest. The definition of "ring officials" is amended to clarify that "physician" means ringside physicians. The definition of "Technical Zone" is amended to clarify it and to provide that it is alcoholic beverage free. A new definition of "Full Contact" is added to define the term, which is used in the definition of "combative sports" in statute. The two definitions when considered together indicate that events where full contact is prohibited, as defined here, are not regulated under the Act.

Section 61.20(a), General Licensing Requirements, is amended to make it clear that persons participating in professional events must be licensed. New subsection (b) is added to require Amateur Combative Sports Associations ("ACSA") to be registered as required by new statute. Newly relettered subsection (e) is amended to remove the requirement that contestants and seconds notify the department of address changes. Original subsection (c) is deleted as the requirement to report changes in ownership is not needed in this program. Original subsections (e), (f), (g), (h), and (j) are deleted here and moved to rules more appropriate to their subjects.

Section 61.21, formerly General Prohibitions (new §61.23), is a new section, Licensing Requirements--Referees. The rule establishes criteria that referees must meet to become licensed and to provide a grandfathering period for persons currently licensed. The new rule will assure that persons serving as referees are qualified.

New §61.22, Licensing Requirements--Judges, establishes criteria for licensure as a judge.

New §61.23, General Prohibitions (formerly §61.21), is amended at subsection (b) to clarify the language with no substantive change. Subsection (c) is amended to eliminate references to elimination tournaments that were banned by statutory change, and to remove requirements for certain medical tests that are required by other rules. Subsections (d), (e), (f), and (h) are clarified without substantive change. Subsection (g) is deleted as it simply repeats requirements set out in statute or elsewhere in the rules. Subsection (i) is amended to allow persons who are members of a ranking organization, but who are not officers or directors, to be licensed as judges.

New §61.24, Practice Requirements--General, consists of subsections (a), (b), and (c) which were subsections (e), (g), and (j) that were deleted from §61.20. Some of the language has been changed but the substance has not.

Section 61.30, Responsibilities and Authority of the Executive Director, is amended at its title. Subsections (a) and (b) have been combined into subsection (a) without substantive change. Subsections (b) - (j) and (m) - (q) have been amended to clarify language but with no substantive change. Subsection (k), as amended, has been changed to continue the authority of the Executive Director to waive rules, but under the conditions set out in the amended language. Subsection (p) is deleted and moved to §61.40.

Section 61.40, Responsibilities of the Promoter, is amended at subsection (a)(1) to require promoters at the time of licensure and license renewal to post two bonds, one for $10,000 to secure payment of costs of an event and one for $15,000 to secure payment of gross receipts taxes. These provisions are not new. Also, a provision allowing a promoter to file a financial statement in lieu of the $10,000 bond has been deleted. Subsection (b)(13) is amended to delete language that is now in §61.107. Subsection (b)(15) is deleted and issues concerning gloves are addressed in the new subsection (b)(15) as amended. New subsection (b)(15) requires promoters to follow rules specific to the class of event for equipment and gloves. Subsection (b)(15)(A) - (L) are deleted and moved to §61.106. Subsection (b)(15)(B) as amended now requires the promoter to set up the Technical Zone as instructed by the Executive Director. Subsection (b)(16) as amended now allows promoters to pay certain licensing fees by money order as well as by check. Subsection (d)(1) is amended to remove the requirement that the promoters' license number be printed on each ticket. Subsection (d)(3) is amended to provide that when there is a ticket manifest, tickets of different prices are not required to be printed on paper of different colors. Subsection (d)(10) is added. This is old §61.30(p) that was deleted. The substance is not changed. Subsection (e) is amended to provide three business days for payment of the gross receipts tax rather than 72 hours.

Section 61.41, Responsibilities of the Referee, is amended by deleting subsection (f) and replacing it in subsection (k) as amended. Subsection (k) is amended at paragraph (1) and is changed to refer to a blow as opposed to a punch causing a knock-down. A knock-down is now defined in the definitions rule. New subsection (k)(7) and (8) are where the old subsection (f) is now shown without substantive change. Subsections (p) and (q) are deleted and have been moved without substantive change to new §61.21.

Section 61.42 is amended at subsection (d), no substantive change and subsection (e) to remove a reference to a referee's scorecard. Subsection (f) is deleted and moved without substantive change to new §61.22

Section 61.43, Responsibilities of Seconds, is amended at subsection (e)(4) to refer to unapproved substances as opposed to solutions. Subsections (f), (h), and (i) are amended to clarify language with no substantive change. New subsection (k) is added to require seconds to attend the referee's meeting. This requirement was deleted from §61.20(h).

Section 61.44, Responsibilities of Managers, is amended to delete subsection (b) and add subsection (d) requiring managers to attend the referee's meeting. This requirement was deleted from §61.20(h).

Section 61.46, Responsibilities of Ringside Physicians, is amended at paragraph (1) to allow chief seconds to be present during physical examinations.

Section 61.47, Responsibilities of Contestants, is amended at subsection (g) to remove gender specific provisions to new subsection (g) and to add language concerning jewelry from subsection (u) with no substantive changes. Subsections (k) and (l) that are gender specific are deleted. Subsection (k), as amended, is changed to make it clear that all contestants must have a pre-fight examination, and the required reporting of unfitness may now also be made by the chief second. Subsection (m) as amended is changed to remove the gender specific reference to a positive pregnancy test. Subsection (n) as amended is changed to clarify language. Subsections (r), (t), and (u) are deleted. Subsection (u) is now in subsection (g). New subsection (q) is added to address gender specific requirements deleted from other sections. No substantive changes were made. New subsection (r) is added to require contestants to attend the referee's meeting. This requirement was deleted from §61.20(b).

New §61.48, Responsibilities of Amateur Combative Sports Associations, is added to implement statutory changes requiring that ACSA's be registered. The requirements spelled out here are modeled after the rule for promoters. Subsection (b) requires ACSA's to file rules with the Executive Director and provides that they must address issues that the department has identified that concern safety of contestants, including use of licensed referees. All other participants other than the ACSA, are not required to be licensed. The rules also may establish guidelines for payment of certain expenses for contestants. Those that elect to pay expenses must provide a bond as set out in subsection (d).

New §61.49 requires that amateur organizations exempt from licensing and bonding requirements inform the department of the date, time, and location of their events. That information is needed to respond to inquiries from the public where concern is expressed that illegal events are being conducted. The department can inform them that they are not being conducted in violation of the statute.

Section 61.80, Fees, is amended to delete subsection (a)(10) and to add a new (a)(10) for ACSA's. Subsection (b) is amended to provide that Federal ID cards are valid for four years and subsection (c) is amended to make it clear a permit fee is required for professional events only.

Section 61.105, Weight Categories and Weigh-in-Boxing and Kickboxing, is amended at subsection (d) to clarify the weight categories. There are no substantive changes.

New §61.106, Ring and Glove Requirements--Boxing and Kickboxing, is added to replace items deleted from §61.40 with no substantive changes.

Section 61.107, Boxing, is amended at subsection (b) to remove reference to referees scoring contests. New subsection (e) is added to replace language deleted from §61.40(b)(13) concerning the length of rounds. Kickboxing and mixed martial rules have provisions concerning the length and number of rounds.

Section 61.108 is amended at subsections (g) and (h) to make it clear that provisions concerning holding purses address professional events only.

Section 61.109, Elimination Tournaments/Toughman competitions, is deleted. Elimination tournaments are no longer allowed pursuant to statute.

Section 61.110, Martial Arts, is amended at subsection (b) to clarify and correct references to other rule sections. Subsection (c) is amended to clarify that combative sports events may be conducted pursuant to official rules of any particular art if those rules have been approved by the Department.

Section 61.111, Mixed Martial Arts, has been amended at subsection (a) to clarify and correct references to other rule sections and to delete references to specific martial arts. Subsection (b) - (o) have been deleted and replaced with new subsections (b) - (t). The new subsections do not substantially change the deleted rules but they now include specific references to ring requirements and also allow use of a "fighting area" as defined. The new subsections also include weight categories and reference to the length of rounds and contests.

Section 61.112, Muay Thai Fighting, is amended at subsection (b) by deleting the provision that allows grappling techniques used while the opponents are standing.

The Department drafted and distributed the proposal to persons internal and external to the agency. No public comments were received regarding the amendments, new rules, and/or the repeal; however, the Commission, on recommendation of staff, amended §61.47, Responsibilities of Contestants, at subsections (a) and (m) to clarify testing requirements for the Hepatitis B virus. The proposed language required that applicants be free of the Hepatitis B and C viruses, and HIV. Both subsections are changed to remove the requirement that applicants be free of the Hepatitis B virus to require that applicants not be infected with the virus to such a degree that the applicant poses a threat of communicating it to opponents. Subsection (m) specifically mentions a Hepatitis B surface antigen test, which appears to be the primary test used at this time, but the language also permits other methods that test for Hepatitis B infectivity.

In addition, two clerical errors in the proposed rules are corrected in the adopted rules. In §61.48(b)(2)(A) the phrase "contestant participate" is amended to "contestants who participate". Section 61.111(h)(1) is amended to read, "Flyweight--up to 125 lbs." The numeral "5" was inadvertently omitted from the proposed rule.

16 TAC §§61.10, 61.20 - 61.24, 61.30, 61.40 - 61.44, 61.46 - 61.49, 61.80, 61.105 - 61.108, 61.110 - 61.112

The amendments and new rules are adopted under Texas Occupations Code, Chapter 2052 and Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 2052 and Chapter 51. No other statutes, articles, or codes are affected by the adoption.

§61.47. Responsibilities of Contestants.

(a) Medical Examinations. Each contestant applying for a license, or license renewal, shall submit on a department approved form signed by an examining physician and an examining ophthalmologist proof of having passed a comprehensive medical examination within thirty days of the date the application is signed by the applicant. The exam must include an ophthalmologic medical examination completed by an Ophthalmologist only and must indicate that the applicant is free of the Hepatitis C virus and the human immunodeficiency virus (HIV), and that the applicant is not acutely or chronically infected with the Hepatitis B virus.

(b) A contestant applicant must submit to the Department all information required by the Department's application.

(c) A contestant may not perform under any name that does not appear in departmental records.

(d) Contestants shall in good faith perform to the best of their abilities.

(e) A contestant who commits a foul under these rules is subject to administrative sanctions and or penalties in addition to losing points during a contest.

(f) Arguing with an official or refusing to obey the orders of an official is prohibited.

(g) Contestants shall compete in proper ring attire. The trunks' waistband shall not extend above the waistline and the hem may not extend more than two inches below the knee. Ring attire may not have sequins, buttons, tassels or any other decorative items that may become detached during a contest. A fitted mouthpiece shall be worn while competing. Shoes shall be of soft material and shall not be fitted with spikes, cleats, or hard heels. Contestants may not participate in any contest while wearing jewelry, including but not limited to, watches, rings, necklaces, bracelets, earrings, any type of stud used to penetrate body piercings.

(h) All contestants shall be in the dressing room at least 45 minutes before the event is scheduled to begin. The contestants shall be ready to enter the ring immediately after the preceding contest is finished.

(i) After receiving final instructions from the referee, contestants may touch gloves or shake hands and then shall retire to their corners.

(j) After the referee or judge's decision has been announced, both contestants and their seconds shall leave the ring when requested to do so by the referee.

(k) Every contestant shall undergo a pre-fight physical examination. If a contestant's physical exam shows him unfit for competition, the contestant shall not participate in the contest. The manager, chief second, or contestant shall make an immediate report of the facts to the promoter and the Department.

(l) If a contestant becomes ill or injured and cannot take part in a contest for which he is under contract, he, his chief second, or his manager shall immediately report the facts to the promoter and the Department. The contestant must submit to the Department medical proof of the injury or illness.

(m) A positive Hepatitis C, or human immunodeficiency virus (HIV) test, or a positive Hepatitis B surface antigen test or other indication of Hepatitis B infectivity will result in disqualification.

(n) The administration or use of any drugs or alcohol during, or up to 24 hours before a contest is prohibited unless a drug is prescribed, administered or authorized by a licensed physician and the Executive Director authorizes the contestant to use the drug. If a contestant is taking prescribed or over the counter medication, he/she must inform the Executive Director of such usage at least 24 hours prior to the contest.

(o) As a condition of licensure, contestants waive right of confidentiality of medical records relating to treatment or diagnosis of any condition that relates to the contestant's ability to participate in a contest. All medical records submitted to the Department are confidential, and shall be used only by the Executive Director or his/her representative for the purpose of ascertaining the contestant's ability to be licensed or participate in a contest.

(p) Medical disqualification of a contestant is for his own safety and may be made at the recommendation of the examining physician or the Department. If a contestant disagrees with a medical disqualification, medical suspension or rest period set at the discretion of a ringside physician or a disqualification set by the Department, he may request a hearing to show proof of fitness. The hearing shall be provided at the earliest opportunity after the Department receives a written request from the contestant or his manager.

(q) The following are gender specific provisions.

(1) Male contestants must wear a protection cup, which shall be firmly adjusted before entering the ring.

(2) Female contestants:

(A) Must wear garments that cover their breasts;

(B) Shall submit to a pregnancy test at weigh-in;

(C) Will be disqualified by a positive pregnancy test; and,

(D) May wear breast protection plates.

(r) Contestants must attend the referee's rules meeting conducted prior to the first contest of an event.

§61.48. Responsibilities of Amateur Combative Sports Associations.

(a) An amateur combative sports association (ACSA) must provide to the Department proof that it is either a non-profit organization chartered by the State of Texas or that it is approved as a non-profit organization under the provisions of the Internal Revenue Code.

(b) An ACSA shall file with the Executive Director rules for conducting the organization's affairs and the conduct of its members. The rules:

(1) Must include provisions to:

(A) Establish conditions for membership;

(B) Provide guidelines for training its members in preparation for a contest;

(C) Establish a minimum training period before a contest;

(D) Indicate which class(es) of combative sports the ACSA will conduct;

(E) Require that all referees participating in events conducted by the ACSA are licensed by the Department; and,

(F) Either:

(i) Adopt, as appropriate, rules set out below for boxing, kickboxing, mixed martial arts, and muay thai; or,

(ii) Establish the ACSA's rules for a class or classes of events it will sponsor; and,

(2) May include provisions to:

(A) Provide for payment of actual expenses, up to an established maximum, for the contestants who participate in an event; and,

(B) Allow members of other ACSAs to participate as a visiting member in an event conducted by it without the other ACSA participating in the conducted event, so long as it ascertains that the visiting member is qualified under the rules to be a contestant in the event.

(c) An ACSA may not conduct or participate in any event unless it has received Executive Director's written approval of rules required in subsection (b) of this section.

(d) An ACSA that has adopted rules permitted under subsection (b)(2) of this section must, before it sponsors or participates in any event, submit to the Executive Director a $15,000 surety bond, written by a bonding company authorized to do business in the State of Texas, guaranteeing payment of gross receipts taxes owed for promoted events, which shall remain in effect for four years after the effective cancellation date.

(e) An ACSA shall provide insurance and pay all deductibles for contestants, to cover medical, surgical and hospital care with a minimum limit of $20,000 for injuries sustained while participating in a contest and $50,000 to a contestant's estate if he dies of injuries suffered while participating in a contest. At least ten calendar days before an event the ASCA shall provide to the Department for each event to be conducted, a certificate of insurance showing proper coverage. The ASCA shall supply to those participating in the event the proper information for filing a medical claim.

(f) An ACSA shall ensure that all contestants participating in contests it conducts are amateurs.

(g) An ACSA may not allow any person who has not been a member of the ACSA for at least thirty days to participate as a contestant in any event in which the ACSA participates.

(h) An ACSA conducting an event shall:

(1) Bear all financial responsibility for the event.

(2) Provide the Department written notice of all proposed event dates, ticket prices, and participants of the main event, at least 21 days before the proposed event date and obtain written approval from the Department to promote the event prior to advertising or selling tickets.

(3) Provide two licensed physicians, for each event.

(4) Provide at least one licensed physician to conduct pre-fight physicals. Provide a private area for the physician to perform pre-fight examinations.

(5) Assure that beverages are only allowed in paper or plastic cups at the event.

(6) Assure that no alcoholic beverages or illegal drugs are in the dressing room.

(7) Ensure the safety of the contestants, officials, and spectators.

(A) There shall be a pre-fight plan and route to remove an injured contestant from the ring and arena. Upon request, the promoter shall inform the Department of these plans. The plan shall include the name and location of a local hospital emergency room.

(B) A sufficient number of security personnel shall be retained to maintain order.

(8) Ensure that the rules set forth herein below regarding equipment and gloves that apply to a particular type of event are followed.

(9) Ensure that each contest is conducted as provided by the ACSA's rules approved by the Department.

(10) Ensure that each event has the appropriate equipment as described by the ACSA's rules approved by the Department.

(11) Ensure that all advertising concerning an event to be conducted indicates that it is an amateur event, and includes the name of the ACSA that will conduct the event.

(i) Tickets

(1) All tickets shall have printed on each half, the price including any service surcharge or handling fee, and the event date.

(2) Roll tickets with consecutive numbers shall be sold only at the box office on the day of the show.

(3) If there is no ticket manifest, tickets of different prices shall be printed on different colored ticket stock.

(4) Tickets shall not be sold for more than the actual capacity of the location where the event is held.

(5) ACSA's shall hold tickets of every description used for any event for at least 30 days after the event. The tickets shall be kept in separate packages for each event for audit purposes.

(j) An ACSA shall submit to the Department a tax report and a 3% gross receipts tax payment within three business days after an event.

§61.111. Mixed Martial Arts.

(a) All rules stated herein, except §§61.106 - 61.108 and §61.112 apply to mixed martial arts contests unless this section conflicts with another rule stated herein. If a conflict occurs, this section prevails.

(b) Contestants may wear fingerless gloves weighing not less than 4 ounces, which shall be supplied by the promoter and approved by the Executive Director.

(1) If both contestants wear gloves, closed fist punching and frontal palm/heel strikes are permitted.

(2) If both contestants are not wearing gloves, frontal palm/heel strikes and closed fist punches are not permitted, except to the body.

(c) Contestants may prevail by technical knockout, knockout, submission (either by physical or verbal tap out), disqualification or judges decision.

(d) Scoring Techniques.

(1) Using the 10-Point Must Scoring System, judges are required to determine a winner of a contest that ends after the scheduled number of rounds have been completed. Ten points must be awarded to the winner of each round and 9 points or less must be awarded to the loser, except for a rare even round, which is scored a 10 - 10.

(2) Judges must evaluate mixed martial arts techniques, such as effective striking, effective grappling, fighting area control, and effective aggressiveness/defense.

(e) Contestants may wear shorts, trunks, wrestling singlet, or traditional martial arts Gi, unless otherwise instructed by the Executive Director. Knee braces without metal are permissible. Contestants may not wear shoes of any kind during competition. A male contestant may not wear a shirt during competition.

(f) Each contestant must be clean and present a tidy appearance. The use of grease or any other foreign substance, including, without limitation, grooming creams, lotions or sprays, may not be used on the face, hair or body of a contestant. The referee or the Executive Director's representative shall cause any foreign substance to be removed.

(g) Contestants who wear gloves may wrap hands in a manner approved by the Executive Director. If contestants are not wearing gloves, it is not permissible to wrap hands, but wrists may be taped. Contestants who choose to wear gloves, may only compete with other contestants wearing gloves. Contestants choosing not to wear gloves, may only compete with other contestants who choose not to wear gloves.

(h) Weight Divisions. Except with the approval of the Executive Director, the classes for mixed martial arts contest or exhibitions and the weights for each class are shown in the following schedule:

(1) Flyweight--up to 125 lbs.

(2) Bantamweight--over 125 to 135 pounds

(3) Featherweight--over 135 to 145 pounds

(4) Lightweight--over 145 to 155 pounds

(5) Welterweight--over 155 to 170 pounds

(6) Middleweight--over 170 to 185 pounds

(7) Light Heavyweight--over 185 to 205 pounds

(8) Heavyweight--over 205 to 265 pounds

(9) Super Heavyweight--over 265 pounds

(i) Non-championship contests shall not exceed a total of 15 minutes per contest with no overtime allowed. Championship contests shall not exceed a total of 25 minutes of action. Rounds shall be a minimum of three minutes with a one-minute rest period between each round.

(j) A fitted mouthpiece shall be worn while competing.

(k) A male contestant must wear a plastic foul-proof groin protector (abdominal guard). A female contestant must wear a plastic pelvic guard and may wear a breast protector.

(l) Contestants may use the ropes once during a round. The second time a contestant grabs the ropes will be considered a submission.

(m) Intentionally escaping from the fighting area will result in a rope call.

(n) If both contestants wrestle into or under the ropes and the referee believes that the ropes are causing interference with the match, the referee may stop the action, and require both contestants to take a standing position in the middle of the fighting area before continuing the match.

(o) If both contestants are wrestling on the ground and the referee believes neither contestant will gain an advantage, the referee may stop the contest, and require both contestants to take a standing position in the middle of the fighting area before continuing the match.

(p) Mixed martial arts contests may be conducted either in an approved ring or in an enclosed fighting area. The following specifics apply:

(1) Rings:

(A) Must be no smaller than 16 feet square and no larger than 32 feet square within the ropes. The ring floor must extend at least 18 inches beyond the ropes;

(B) The ring floor must be padded with ensolite or another similar closed-cell foam, with at least 1 inch layer of foam padding. Padding must extend beyond the ring ropes and over the edge of the platform. Material that tends to gather in lumps or ridges may not be used;

(C) The ring platform must not be more than 4 feet above the floor of the venue and must have suitable steps or ramps for the use of the contestants and ring officials;

(D) Ring posts must be made of metal, not more than 3 inches in diameter, extending from the floor of the venue to a minimum height of 58 inches above the ring floor, and must be properly padded in a manner approved by the Executive Director. Ring posts must be at least 18 inches away from the ring ropes;

(E) There must be five ring ropes, not less than 1 inch in diameter and wrapped in soft material. The lowest rope must be 12 inches above the ring floor;

(F) There may not be any obstruction or object on the ring floor;

(2) Fighting Areas:

(A) May be circular or may be multi-sided having four or more sides that are equal in length. A circular fighting area must have a diameter of no less than 16 feet and of no more than 32 feet in length. For a multi-sided fighting area the shortest straight line distance between any two opposite sides must be no less than 16 feet and no more than 32 feet in length.

(B) The floor shall be constructed of material at least 3/4 inch thick, adequately supported, and padded with ensolite or similar closed-cell foam that is at least one inch thick.

(C) Padding shall extend beyond the fighting area and over the edge of the platform, and have a top covering of canvas, duck or similar material approved by the Executive Director.

(D) The covering shall be clean and tightly stretched and laced to the fighting area platform and may not have tears, holes or overlapping seams.

(E) The fighting area platform shall not be more than 4 feet above the floor of the building and shall have suitable steps or ramps for use by the participants.

(F) Posts shall be made of metal not more than 6 inches in diameter, extending from the floor of the venue to between 5 and 7 feet above the canvas of the fighting area and, if inside the fenced area, shall be properly padded in a manner approved by the Executive Director.

(G) The fighting area shall be enclosed by a fence made of material that will not allow a contestant to fall out or break through it onto the floor or spectators; including, without limitation, chain-link fence coated with vinyl. Any metal portion of the fenced area must be covered and padded in a manner approved by the Executive Director and must not be abrasive to the contestants.

(H) A fence area must have 2 gated entrances on opposite sides of the fenced area.

(I) There must not be any obstruction on the fence surrounding the area in which the contestants compete.

(q) The promoter of a mixed martial arts event shall hang at least 2 video screens that meet the approval of the Executive Director and which allow the patrons to view the action inside the enclosed fighting area or ring.

(r) If a laceration occurs, the referee may stop the contest and request the ring physician to examine the laceration. Either the physician or referee can stop the contest.

(s) The following tactics are fouls and may result in disqualification or point deduction at the discretion of the referee.

(1) Head butts.

(2) Downward punching while the opponent's head is touching the mat.

(3) Kicks, punches or any strikes to the groin.

(4) Spitting or biting.

(5) Striking or grabbing the throat area.

(6) Grabbing the trachea.

(7) Kicking while the opponent is down on the mat.

(8) Kneeing to the head of a grounded opponent.

(9) Kicking to the head of a grounded opponent.

(10) Hair pulling.

(11) Engaging in any unsportsmanlike conduct that causes an injury to an opponent.

(12) Attacking on the break.

(13) Attacking after the bell has sounded.

(14) Intentionally pushing, shoving, wrestling, or throwing an opponent out of the fight area.

(15) Holding the fence or the ropes.

(16) Using abusive language in the fighting area.

(17) The use of any foreign substances on any contestant's hair, body or equipment.

(18) Eye gouging of any kind.

(19) Fish hooking.

(20) Putting a finger into any orifice or into any cut or laceration on an opponent.

(21) Small joint manipulation.

(22) Striking to the spine or the back or the head.

(23) Striking downward using the point of the elbow.

(24) Clawing, pinching, or twisting the flesh.

(25) Grabbing the clavicle.

(26) Stomping a grounded opponent.

(27) Kidney strikes of any kind.

(28) Spiking an opponent to the canvas on his head or neck.

(29) Holding the shorts or gloves of an opponent.

(30) Flagrantly disregarding the instructions of the referee.

(31) Attacking an opponent who is under the care of the referee.

(32) Timidity, including without limitation, avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury.

(33) Throwing in the towel during competition.

(34) Interference by the corner.

(t) The determination of the winner shall be as follows:

(1) by submission, either verbally or by tapping two or more times on the mat, ropes, ring corner or the opponents body;

(2) by knockout;

(3) by being down on the map for a ten count;

(4) by the referee disqualifying a contestant through a technical knockout;

(5) by the referee stopping a match based upon a ring physician's advice;

(6) by a contestant's corner stopping the bout;

(7) by the referee disqualifying a contestant for a violation of these rules; or

(8) by the judges decision based upon technique and aggressiveness minus the number of penalties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.
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For further information, please call: (512) 463-7348

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16 TAC §61.21, §61.109

The repeal is adopted under Texas Occupations Code, Chapters 2052 and Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapter 2052 and Chapter 51. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 66. REGISTRATION OF PROPERTY TAX CONSULTANTS

16 TAC §§66.1, 66.10, 66.20, 66.21, 66.25, 66.61, 66.65, 66.70 - 66.72, 66.80, 66.90, 66.100

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to existing rules at 16 Texas Administrative Code, Chapter 66, §§66.1, 66.10, 66.20, 66.61, 66.65, 66.70, 66.71, 66.72, 66.80, and 66.90; new rules §§66.21, 66.25 and 66.100; regarding the property tax consultants program without change as published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7342) and will not be republished.

The amendments and new rules are necessary to update statutory references and conform rule requirements to current law. In addition, these rule changes are needed to reorganize provisions for greater clarity and readability and to delete unnecessary provisions. A new continuing education rule is added to make continuing education requirements consistent with 16 Texas Administrative Code, Chapter 59, which contains the Commission's general rules for continuing education providers and courses. For greater clarity, rule provisions relating to continuing education are separated from rule provisions relating to pre-registration education and education for upgrade to a senior property tax consultant registration. Statutory references are updated, and obsolete references to "commissioner" are replaced by references to "executive director," "department," or "commission" as appropriate. The definition of "private provider" in §66.10 is amended to clarify that this term applies only to providers of education for pre-registration and upgrade credit, not to continuing education providers. New provisions in §§66.10 and 66.20 are relocated from other places, and certain provisions are consolidated. Certain requirements of §66.21 are not needed because they repeat statutory requirements or contain detail that can be addressed adequately in a Department application form.

A new §66.21 is added to consolidate and update requirements for private providers and pre-registration or upgrade education. In §66.21(e) the word "annually" is substituted for "biannually" to change the interval for program reviews from twice every year to one a year. Section 66.22 is replaced with a new continuing education rule at §66.25.

New §66.25 is needed to change the continuing education requirements for registrants. This new rule is necessary to make continuing education requirements in the property tax consultant program generally consistent with the Department's continuing education model in other programs, while recognizing unique requirements for property tax consultants. Under Texas Occupations Code, §51.405 the Commission is required to recognize, prepare, or administer continuing education programs for license holders, and a license holder must participate in the programs to the extent required by the Commission to keep the person's license. The new §66.25 is proposed under that statutory provision. The Commission's general requirements for continuing education providers and courses, which are contained in 16 Texas Administrative Code, Chapter 59, will now apply to providers and courses in the property tax consultant program, including the fees for provider registration and course approval. New §66.25 establishes requirements that are specific to the property tax consultant program for registrants, providers, and courses.

Unnecessary language is deleted from §66.61, and an amendment clarifies that the Commission may invoke the full range of administrative sanctions for cheating on an examination. The substance of §66.63 is relocated to new §66.21.

Technical corrections are made to §66.65, and language in subsection (g) and (h) is deleted as duplicative of or inconsistent with statutory provisions. Language in §66.70(c) is deleted because

the code of ethics sufficiently addresses false or misleading advertising. Other provisions are moved to this section from elsewhere. In subsection (c) a specific time frame of 30 days is stated to provide greater clarity and enforceability. A requirement that a registered property tax consultant only offer services to a senior property tax consultant is deleted as inconsistent with statutory requirements. A reference to continuing education is removed from §66.72 to clarify that these requirements pertain to pre-registration and upgrade education. Section 66.72(c) is changed to require that a private provider provide a certificate to the participant including actual hours attended. The audit provisions of subsections (d) and (e) are enhanced to be more consistent with analogous provisions in Chapter 59 of the Commission's rules.

Clarifying amendments are made to §66.80. Fees are relocated to §66.80 from §§66.82, 66.83, and 66.85, which are repealed. Technical corrections are made to §66.90. Finally, the code of ethics is placed in new §66.100.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. No comments were received concerning the amended or new rules.

The amended and new rules are adopted under Texas Occupations Code, Chapters 51 and 1152, which authorize the Commission to adopt rules as necessary to implement those chapters. The statutory provisions affected by the new and amended rules are those set forth in Texas Occupations Code, Chapters 51 and 1152. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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16 TAC §§66.21, 66.22, 66.24, 66.60, 66.62 - 66.64, 66.82, 66.83, 66.85, 66.91

The Texas Commission of Licensing and Regulation ("Commission") adopts the repeal of existing rules at 16 Texas Administrative Code, Chapter 66, rules §§66.21, 66.22, 66.24, 66.60, 66.62, 66.63, 66.64, 66.82, 66.83, 66.85, and 66.91, regarding the property tax consultants program, without changes as published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7346) and will not be republished.

The repeal is necessary to update statutory references and conform rule requirements to current law. In addition, these rule changes are needed to reorganize provisions for greater clarity and readability and to delete unnecessary provisions. Section 66.21 is repealed because unnecessary provisions are deleted and all other provisions are relocated to other sections. Certain requirements of §66.21 are not needed because they repeat statutory requirements or contain detail that can be addressed adequately in a Department application form. Section 66.22 is repealed to be replaced with a new continuing education rule at §66.25. Section 66.24 is repealed because examination rescheduling is addressed in a general Commission rule at 16 Texas Administrative Code §60.84.

Section 66.60 is repealed as unnecessary because Department complaint procedures are addressed in other rule and statutory provisions. The substance of §66.63 is relocated to new §66.21. Requirements of §66.62 are incorporated into §66.21. Section 66.64 is repealed because subsection (a) is unnecessary in light of the Department's statutory authority to investigate complaints, and the substance of subsection (b) is incorporated into §66.72.

Fees are relocated to §66.80 from §§66.82, 66.83, and 66.85, which are repealed. Section 66.91 is repealed because it merely repeats statutory provisions.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. No comments were received concerning the repealed rules.

The rule repeal is adopted under Texas Occupations Code, Chapters 51 and 1152, which authorize the Commission to adopt rules as necessary to implement those chapters. The statutory provisions affected by the repealed rules are those set forth in Texas Occupations Code, Chapters 51 and 1152. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 74. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

16 TAC §§74.10, 74.20, 74.25, 74.30, 74.50, 74.55, 74.60, 74.65, 74.70, 74.75, 74.80, 74.85, 74.90

Texas Commission of Licensing and Regulation ("Commission") adopts the amendments to existing rules at 16 Texas Administrative Code, Chapter 74, §§74.10, 74.20, 74.25, 74.30, 74.50, 74.55, 74.60, 74.65, 74.70, 74.75, 74.80, 74.85 and 74.90 regarding elevators, escalators and related equipment, without changes as published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7665) and will not be republished.

These amendments are necessary to clarify the language of the rules and to bring the rules into closer compliance with statutory provisions.

Rule 74.10 Definitions is amended to delete the definition of "accident" since the term is clearly defined by statute. The definition of ASCE Code 21 is also deleted as the term is defined by statute and no addenda need to be included. Paragraph (17),

unsafe elevator or escalator has been amended so that equipment that has any defect that presents a risk of serious injury is unsafe. Paragraph (18) is amended to delete the word "permanent" from the definition of waiver and to add the phrase "for an indefinite period of time."

Rule 74.20 Inspector Registration Requirements is amended to clarify rule language in several areas. It is also amended to delete the requirement that inspectors attend an annual meeting conducted by the department, and to provide that inspectors shall attend a meeting when the Executive Director determines that a meeting is needed. It is anticipated that such meetings will occur less frequently than annually.

Rule 74.25 Contractor Registration Requirements is amended to clarify procedures for contractor registration and registration renewals. It is also amended at subsection (d)(3) and (4) to provide that quarterly reports should include jobs performed as opposed to the requirement that they report jobs contracted. Rule 74.30 Exemptions is amended to include all statutorily provided exemptions.

Rule 74.50 Reporting Requirements--Building Owner is amended at subsection (a)(2) to require reports for each unit of equipment in a building rather than the current requirement for reports for a unit of equipment. Subsection (b)(1) is amended to provide that tenants or occupants shall be notified of certain delays. Subsection (c) requiring owners to submit in writing the status of all delays is deleted. Subsections (c), (d) and (e) as amended, clarify references to codes.

Rule 74.55 Reporting Requirements--Inspector is amended at subsection (a) to change a filing deadline from ten working days to ten calendar days to comply with the statute. Subsection (b) is deleted and a new subsection (c) is amended to replace working days with calendar days.

Rule 74.60 Standards of Conduct for Inspector or Contractor Registrants is amended at subsection (e)(6) to delete the reference to an employee or a full or partial owner.

Rule 74.65 Advisory Board is amended to delete the sentence providing that the Board consists of 13 members since the size of the Board is prescribed by statute.

Rule 74.70 Responsibilities of the Building Owner is amended at subsection (a) to remove the requirement for an owner to contract or employ an inspector and replace it with the requirement to obtain services of a registered inspector. Subsection (c) is amended to require that maintenance and inspection records be available in the building rather than requiring that copies be kept in the building. Subsection (d) is amended to add a reference to the statute. Subsection (e) is amended to require that persons performing inspections must be registered with the department. Subsection (k)(1)(A) is amended to specify maximum and minimum heights at which certificates must be displayed. Subsection (k)(2) is amended to provide for display of escalator certificates or identifier plaques within 10 feet of the entry and the exit of an escalator and to delete the requirement for display in the escalator box as the interior of the box may not be visible to the public. Subsection (n)(2) is added to require reinspection and certification when equipment has been determined to be unsafe or if cosmetic alterations to an elevator cab has made the elevator unsafe. Subsection (n) has been added to require the owner to have copies of all waivers and delays in the machine room for use by elevator personnel.

Rule 74.75 Responsibilities of the Inspector has been amended at subsection (a)(4) to replace the requirement that the person performing safety tests sign inspection reports with a requirement that the building owner sign the reports. Subsection (a)(7) is added to provide that equipment shall not be used by the public until the equipment is completely installed and all work is completed. Subsection (c)(1) is amended to clarify the placement of test tags.

Section 74.80 Fees is amended to remove subsection (a)(4) setting a fee for inspector education programs, and other subsections are amended to clarify the rule language. Rule 74.85 Responsibilities of the Department is amended by adding subsection (d) to provide that the department may review inspection reports.

The department drafted and distributed the proposed rules to persons internal and external to the agency. One public comment was received in response to the proposed amendments. The amendments are made in response to Texas Department of Licensing and Regulation's review of Chapter 74, pursuant to Government Code §2001.039 which resulted in the Commission making a determination that the rules as amended should be maintained.

The commenter expressed concern that changing Rule 74.75 (a)(4) to replace the requirement that the person performing inspections sign the report with a requirement that the building owner sign the report would cause an increase in the costs to owners to have inspections performed. This is not a change in procedure insofar as the owner is concerned; the inspection form already requires the owner or the owner's agent to sign the report. Rather, it is a rule change to bring the rule into agreement with practice. The commenter also noted changes to subsection (a)(7) and (c)(1) but did not propose changes or express any concern about the noted changes. The Commission has not made any change in response to the comment.

The amendments are adopted under Health and Safety Code, Chapter 754 and Occupations Code, Chapter 51, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Texas Department of Licensing and Regulation.

The statutory provisions affected by the adoption are those set forth in Health and Safety Code, Chapter 754 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 77. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

16 TAC §§77.1, 77.10, 77.21, 77.22, 77.70, 77.72, 77.80, 77.90

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to existing rules at 16 Texas Administrative Code, Chapter 77, §§77.1, 77.10, 77.21, 77.70, 77.80, and 77.90, and new rules §§77.22 and 77.72, concerning service contract providers and administrators without change as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 7960) and will not be republished.

The amendments and new rules are necessary to implement House Bill 1286, 79th Texas Legislature, which amends the service contract statute, Texas Occupations Code, Chapter 1304. House Bill 1286 adds a registration requirement for administrators of service contracts and establishes minimum surplus and paid-in capital requirements for insurers issuing reimbursement insurance policies that are used as financial security by service contract providers. The bill takes effect January 1, 2006, except for the required registration of administrators, which takes effect March 1, 2006. The new and amended rules implement these statutory changes. The new and amended rules are also necessary to make technical updates and corrections to the rules for the service contract program. References to statutes and rules are updated throughout the rules.

In §77.10 the definition of "consumer" is deleted as unnecessary because the same term is already defined somewhat differently in Texas Occupations Code, Chapter 1304. A definition of "third-party administration of a service contract" is added to clarify the statutory definition of "administrator" in Texas Occupations Code, §1304.002, by specifying the activities that constitute third party administration. The heading of §77.21 is amended to specify that the requirements of that section apply both to initial registration and renewal and apply specifically to providers. As a result of changes in statutory language, new language is added in §77.21(b) to state explicitly that a registration is valid for one year and must be renewed annually. New language in subsection (c) clarifies that initial and renewal applications for registration must be on a form prescribed by the executive director. New §77.22 establishes registration and renewal requirements for administrators. Amendments to §77.70 are needed to make certain responsibilities that apply to providers also apply to administrators.

New §77.72 implements new financial security requirements added by House Bill 1286. New §77.72(b) is needed to require that a reimbursement insurance policy must include the Department's prescribed "Service Contract Provider Texas Endorsement" or equivalent language. The Department's practice has been to request that reimbursement insurance policies include the endorsement, which contains statutorily-required provisions. The new rule requires use of the endorsement unless the policy contains equivalent language. The rule is needed to ensure that reimbursement insurance policies include provisions required by Texas Occupations Code, Chapter 1304, including provisions added by House Bill 1286.

Amendments to §77.80 are needed to clarify provider fees for initial registration and renewal and to add initial registration and renewal fees for administrators. The fee for a duplicate or amended registration certificate is lowered to $25, consistent with similar fees in other Department programs. Section 77.90 is amended to update statutory references, remove a reference to "the Act" which is not a defined term, make a technical correction to the language concerning imposing an administrative penalty, and clarify that the possible penalties for a violation include denial of a registration.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. No comments were received concerning the new and amended rules.

The new and amended rules are adopted under Texas Occupations Code, Chapters 51 and 1304, which authorize the Commission to adopt rules as necessary to implement these chapters. In particular, the amendments and new rules implement acts of the 79th Texas Legislature, House Bill 1286. The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1304. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1018

The Texas Education Agency (TEA) adopts new §61.1018, concerning payment of supplemental compensation, with changes to the proposed text as published in the October 7, 2005 issue of the *Texas Register* (30 TexReg 6398). The adopted new section specifies definitions, eligibility criteria, and reporting requirements for the supplemental compensation as well as describes the process of handling the calculation, distribution, and settle-up process for this source of funding.

Senate Bill 1863, 79th Texas Legislature, Regular Session, 2005, added TEC, Chapter 22, School District Employees and Volunteers, Subchapter D, Compensation Supplementation. TEC, §22.102, authorizes the TEA to adopt rules to implement provisions relating to the supplemental compensation. Prior to passage of this legislation, rulemaking for supplemental compensation was the responsibility of the Teacher Retirement System of Texas (TRS). However, districts reported their eligible employees to the TEA, and the TEA made the payments of supplemental compensation on behalf of TRS. The statutory change prompting this rule action moved the responsibility for the program to the TEA, which is expected to result in more efficient administration of the supplemental compensation.

The adopted new rule specifies definitions, including those for full-time and part-time employees and professional staff; establishes reporting requirements; delineates eligibility criteria; and sets forth the funding formula, distribution procedures, and settle-up process.

Districts will continue to report their eligible employees to the division at the TEA responsible for state funding as they have for the past four years.

In response to public comment, a change was made in subsection (d)(3) since published as proposed. Reference to employment by "the" eligible entity was changed to "an" eligible entity to clarify that the 90-day waiting period for an individual to be eligible to receive supplemental compensation would apply only to employees who are new to the TRS (i.e., a first-time teacher or a teacher with a break in service). This change clarifies the current interpretation that once an individual has been employed with any eligible entity for the required amount of time, the waiting period requirement has been satisfied. No other changes were made to the rule or accompanying figures since published as proposed.

Following is a summary of public comment received on the proposed new section and the corresponding agency response.

Comment. The director of legislation of the Texas Classroom Teachers Association asked whether the rule language is intended to convey the previous interpretation of the 90-day waiting period, which would mean that the 90-day waiting period would apply only to employees who are new to the TRS (i.e., a first-time teacher or a teacher with a break in service).

Agency response. The agency agrees that the rule is intended to convey its previous interpretation and has made one change to the language in subsection (d)(3) to clarify the current interpretation that once an individual has been employed with any eligible entity for the required amount of time, the waiting period requirement has been satisfied.

The new section is adopted under the Texas Education Code, §22.102, which authorizes the Texas Education Agency to adopt rules to implement Texas Education Code, Chapter 22, School District Employees and Volunteers, Subchapter D, Compensation Supplementation, added by Senate Bill 1863, 79th Texas Legislature, 2005.

The new section implements the Texas Education Code, §§22.101-22.110.

§61.1018. Payment of Supplemental Compensation.

(a) Purpose. In accordance with the Texas Education Code (TEC), Chapter 22, Subchapter D, each month the Texas Education Agency (TEA) shall distribute funds, subject to the availability of funds, for the purpose of payment of supplemental compensation, as specified by the provisions delineated in this section.

(b) Definitions. The following words and terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Entity--An entity is defined as:

(A) a school district or other educational district whose employees are members of the Teacher Retirement System of Texas (TRS);

(B) a participating charter school; or

(C) a regional education service center.

(2) Full-time employee--An individual is employed as a full-time employee if the individual:

(A) is a participating member of the TRS;

(B) is employed by a school district, other educational district whose employees are members of the TRS, a participating charter school, or a regional education service center;

(C) is not a retiree covered under the Texas Public School Retired Employees Group Benefits Program established under the Texas Insurance Code, Chapter 1575;

(D) is not professional staff; and

(E) works for an entity or any combination of entities for 30 or more hours each week.

(3) Part-time employee--An individual is employed as a part-time employee if the individual:

(A) is a participating member of the TRS;

(B) is employed by a school district, other educational district whose employees are members of the TRS, a participating charter school, or a regional education service center;

(C) is not a retiree covered under the Texas Public School Retired Employees Group Benefits Program established under the Texas Insurance Code, Chapter 1575;

(D) is not professional staff; and

(E) works for an entity or any combination of entities for less than 30 hours each week.

(4) Professional staff--An individual is employed as professional staff if:

(A) the individual is employed by a school district, a charter school, or other eligible entity that is not a regional education service center and 50% or more of the individual's time is reported under any combination of the role identifications in the Public Education Information Management System (PEIMS) specified in this subparagraph, or under any subsequently created role identifications that describe roles that are substantially similar to the ones identified in this subparagraph;
Figure: 19 TAC §61.1018(b)(4)(A)

(B) the individual is employed by a regional education service center and 50% or more of the individual's time is reported under any combination of the role identifications in PEIMS specified in this subparagraph, or under any subsequently created role identifications that describe roles that are substantially similar to the ones identified in this subparagraph; or
Figure: 19 TAC §61.1018(b)(4)(B)

(C) regardless of how the individual's time is reported in PEIMS, 50% or more of the individual's time is reported in a role that is substantially similar to a role set out in subparagraph (A) or (B) of this paragraph, as determined by the reporting entity or combination of entities.

(c) Reporting. For each designated report month, each entity shall report to the TEA the number of full-time and part-time employees eligible to receive supplemental compensation and the total number of professional staff, as determined by the entity in accordance with requirements established by the TEA in this section.

(1) The TEA division responsible for state funding must receive each monthly report by 5:00 p.m. Central Time on the 10th calendar day of each month or, if that date is not a business day, by

5:00 p.m. Central Time on the first business day after the 10th calendar day of the month.

(2) The TEA may dispute, seek verification of, or conduct an investigation regarding the reported number of employees and staff at any time after receiving the report.

(d) Eligibility. For the purposes of this section, an individual is eligible to receive supplemental compensation if the individual:

(1) is a full-time employee, as defined in subsection (b)(2) of this section, or a part-time employee, as defined in subsection (b)(3) of this section;

(2) is not a professional staff member, as defined by subsection (b)(4) of this section; and

(3) has been employed by an eligible entity for a period of at least 91 days.

(e) Funding formula. The TEA will remit funds to an entity if the TEA receives the required report on or before the deadline and does not seek verification of, choose to investigate, or otherwise dispute information in the report upon initial review. The remittance is subject to later adjustment if the TEA determines that there are errors in the report. The TEA will remit to the entity, subject to the availability of funds appropriated for this purpose, the sum of:

(1) an amount equal to the number of full-time employees reported by the entity for the reporting month multiplied by $500 and divided by 12; and

(2) an amount equal to the number of part-time employees reported by the entity for the reporting month multiplied by $250 and divided by 12.

(f) Distribution.

(1) If a report is submitted after the deadline specified in subsection (c) of this section, remittance to the reporting entity will be delayed by at least one month even if the TEA does not dispute or seek verification of the numbers reported.

(2) In the first month an individual becomes eligible for the supplement, all entities must begin to distribute the appropriate monthly supplement to each eligible individual employed by the entity, regardless of whether reports are submitted in accordance with the deadlines and other requirements of this section.

(3) Entities must continue to make the appropriate monthly distribution to eligible individuals for the length of time that such individuals are employed, as determined by the entity, for at least one day of the applicable month, provided that the individual did not receive a monthly distribution from another entity for employment that occurred earlier in the same month.

(g) Settle-up.

(1) Entities must submit proposed adjustments to previously reported numbers through September 30 of the fiscal year following the reporting month. The TEA may make adjustments to previously reported numbers and may make a corresponding increase or decrease in funds that would otherwise be remitted to an entity at any time after receipt of a report.

(2) A final determination of supplemental compensation for a school year shall be based on the reports of eligible employees submitted to the TEA division responsible for state funding. Any adjustments to prior year reporting must be completed by September 30 of the following school year.

(A) Additional amounts owed to districts for supplemental compensation shall be added to payments of supplemental compensation in the subsequent school year, and any reductions in payments shall be subtracted from payments of supplemental compensation in the subsequent school year until the overpayment has been recovered.

(B) Any overpayments from a prior year that exceed the amount of supplemental compensation owed to a school district or charter school by March 31 of the following school year will be subtracted from the Foundation School Fund payments owed to that school district or charter school in April and subsequent months until the full amount of overpayment has been recovered. Any overpayments that cannot be subtracted from current payments of supplemental compensation or Foundation School Fund payments will be due and payable upon request from the TEA.

(C) Adjustments to state assistance based on changes in the final number of eligible employees resulting from a subsequent audit or review of the data reported to the TEA or to the TRS must be requested no later than 12 months following the close of the school year for which the adjustment is sought.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 11, 2006.

TRD-200600169
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: January 31, 2006
Proposal publication date: October 7, 2005
For further information, please call: (512) 475-1497

CHAPTER 153. SCHOOL DISTRICT PERSONNEL

SUBCHAPTER CC. COMMISSIONER'S RULES ON CREDITABLE YEARS OF SERVICE

19 TAC §153.1022

The Texas Education Agency (TEA) adopts an amendment to §153.1022, concerning the minimum salary schedule for certain professional staff, with changes to the proposed text as published in the October 21, 2005 issue of the *Texas Register* (30 TexReg 6901). The section establishes definitions of qualifying staff, details eligibility criteria for placement on the salary schedule, and explains the base pay for the 1999-2000 biennium. The adopted amendment updates the rule to modify the components and calculation of the minimum monthly salary rates prescribed by Texas Education Code (TEC), §21.402.

The commissioner is authorized to adopt a minimum monthly salary schedule for certain professionals, including classroom teachers and full-time librarians, counselors, and nurses. The salary schedule is based on the employee's level of experience. In accordance with TEC, §21.402, enacted by Senate Bill 4, 76th Texas Legislature, 1999, 19 TAC §153.1022 was adopted to be effective January 2, 2000. The rule establishes definitions of qualifying staff, details eligibility criteria for placement

on the salary schedule, and explains the base pay for the 1999-2000 biennium. Salaries are adjusted using a factor, defined as "FS" in TEC, §21.402(a), based on state assistance under TEC, §42.302.

The adopted amendment to 19 TAC §153.1022 specifies the components and calculation of "FS" and sets forth minimum monthly salary rates. The adopted amendment modifies subsection (c) to incorporate a new element in the determination of "FS" and modifies subsection (d) by specifying that the salary rates are applicable for the entire 2005-2006 and 2006-2007 school years. The table set forth as Figure 19 TAC §153.1022(d) in subsection (d) establishes the new minimum monthly salary rates.

In response to public comments, a change was made to subsection (d) since published as proposed. In recognition that the adoption of a modified salary schedule during the middle of the school year may create unforeseen pressure on local district budgets, language was added to allow districts to make payments related to this salary increase on a locally-determined schedule, provided that the total amount paid to eligible employees meets the new minimum amounts. School districts will be given through the end of this school year to fully compensate their eligible employees for any increases. No changes were made to the table that establishes the new minimum salary rates since published as proposed.

Numerous comments were received on the proposal, most of which supported the proposed changes to the salary schedule. The following is a summary of public comments received on the proposed amendment to 19 TAC §153.1022 and corresponding agency responses.

Comment. More than 1,500 individuals, including educators and interested citizens, submitted comments expressing support for the proposed increases to the minimum salary schedule.

Agency response. The agency concurs with the need to modify the minimum salary schedule.

Comment. Four school administrators submitted comments indicating their dissatisfaction with the adoption of the new salary schedule during the school year. These comments indicated that school administrators felt that they had not had adequate time to plan and budget for the new salary requirements.

Agency response. The agency recognizes that the rule adoption has taken place considerably later than the June 1 deadline established by TEC, §21.402(b), which requires the commissioner to determine the amount of state and local funds available for the purposes of establishing the minimum salary schedule. In recognition that the adoption of a modified salary schedule during the middle of the school year may create unforeseen pressure on local district budgets, language was added to §153.1022(d) to allow districts to make payments related to this salary increase on a locally-determined schedule, provided that the total amount paid to eligible employees meets the new minimum amounts. School districts will be given through the end of the 2005-2006 school year to fully compensate their eligible employees for any increases.

The amendment is adopted under the Texas Education Code, §21.402, which authorizes the commissioner of education to adopt rules to govern the application of the minimum salary schedule for certain professional staff.

The amendment implements the Texas Education Code, §21.402.

§153.1022. Minimum Salary Schedule for Certain Professional Staff.

(a) Definitions and eligibility. The following definitions and eligibility criteria apply to the increases in the minimum salary schedule in accordance with Texas Education Code (TEC), Chapter 21.

(1) The staff positions that qualify for the salary increase include classroom teachers and full-time librarians, counselors, and nurses employed by public school districts and who are entitled to a minimum salary under TEC, §21.402.

(A) A classroom teacher is an educator who teaches an average of at least four hours per day in an academic or career and technology instructional setting pursuant to TEC, §5.001, focusing on the delivery of the Texas essential knowledge and skills and holds the relevant certificate issued by the State Board for Educator Certification (SBEC) under the provisions of TEC, Chapter 21, Subchapter B. Although non-instructional duties do not qualify as teaching, necessary functions related to the educator's instructional assignment such as instructional planning and transition between instructional periods should be applied to creditable classroom time.

(B) A school librarian is an educator who provides full-time library services and holds the relevant certificate issued by the SBEC under the provisions of TEC, Chapter 21, Subchapter B.

(C) A school counselor is an educator who provides full-time counseling and guidance services under the provisions of TEC, Chapter 33, Subchapter A, and holds the relevant certificate issued by the SBEC pursuant to the provisions of TEC, Chapter 21, Subchapter B.

(D) A school nurse is an educator employed to provide full-time nursing and health care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice and has been issued a license to practice professional nursing in Texas.

(2) An eligible educator who is employed by more than one district in a shared service arrangement or by a single district in more than one capacity among any of the eligible positions qualifies for the salary increase as long as the combined functions constitute full-time employment.

(3) Full-time means contracted employment for at least ten months (187 days) for 100% of the school day in accordance with definitions of school day in TEC, §25.082, employment contract in TEC, §21.002, and school year in TEC, §25.081.

(4) A local supplement is any amount of pay above the state minimum salary schedule for duties that are part of a teacher's classroom instructional assignment.

(5) Current placement on the salary schedule means a placement based on years of service recognized for salary increment purposes up to the current year.

(6) Salary schedule means a system of providing routine salary increases based upon an employee's total teaching experience and/or an employee's longevity in a school district.

(b) Base pay for the 1999-2001 biennium. As long as employment is in the same position, eligible educators may not receive a minimum salary for each year of the biennium that is less than the salary that they would have received in 1998-1999 at their current placement on the employing district's 1998-1999 salary schedule.

(1) An educator eligible for the salary increase is entitled to a minimum salary in 1999-2000 and 2000-2001 equal to the greater of the salary corresponding to their current placement on the state salary

schedule pursuant to TEC, §21.402(a), or the salary corresponding to their current placement on the employing district's 1998-1999 salary schedule, plus $300 per month. If employed by the same district, the minimum must include any local and career ladder supplements the employee would have received in 1998-1999. In addition to classroom teachers, this provision applies to eligible counselors, nurses, and librarians whose salary was based on placement on a salary schedule in 1998-1999.

(2) Eligible counselors, nurses, and librarians who were not on a salary schedule in 1998-1999 are entitled in 1999-2000 to the greater of the salary earned in 1998-1999 plus $300 per month or to the salary corresponding to their current placement on the salary schedule. These educators are placed on the state schedule according to the same criteria that applies to teachers and librarians pursuant to §153.1021 of this title (relating to Recognition of Creditable Years of Service). In 2000-2001, they are entitled to maintain the salary earned in 1999-2000 or to meet the minimum corresponding to their current placement on the salary schedule, whichever is greater.

(3) A beginning teacher who has not previously been on the state salary schedule is entitled to any local supplement that would have been offered to a beginning teacher on the employing district's 1998-1999 salary schedule.

(4) Educators who are eligible for the salary increase and who are employed for more than ten months are entitled to an additional $300 in increased pay for each full month of additional service.

(5) Teachers who are eligible for the salary increase but who are not employed full-time (work either less than 100% of the day or for a portion of the year) are entitled to a proportionate pay increase. For teachers working less than 100% of the day, the increase is proportionate to the percent of the day employed. For teachers employed less than a full year, the increase is valid only for the months employed.

(6) Nurses, librarians, and counselors who are employed for less than a full school year or who are placed in an eligible assignment for less than a full school year are entitled to a pay increase in proportion to the months employed in which they are eligible.

(c) Determination of "FS." The value of "FS" in the formula contained in TEC, §21.402, shall be determined by dividing the sum of state and local shares of allotments under TEC, Chapter 42, Subchapters B, C, and F, plus the funds allocated under Rider 69 of the General Appropriations Act, as amended by House Bill 1, First Called Session, 79th Texas Legislature, 2005, by the weighted students in average daily attendance for the year. For this determination, the commissioner of education shall use projections of the total amount of allotments and the number of weighted students for the year. In accordance with TEC, §21.402(a), the commissioner shall project the revenues available under TEC, Chapter 42, Subchapter F, based on a guarantee level of $24.70 and a district enrichment tax rate (DTR) of $0.64.

(d) Monthly minimum salary rates. The minimum monthly salary rates applicable for the entire 2005-2006 and 2006-2007 school years, in accordance with this section and TEC, §21.402, shall be as set forth in the table in this subsection. For purposes of the 2005-2006 school year only, a district may make monthly payments based on the 2004-2005 minimum salary schedule for part of the school year, so long as total compensation paid to an eligible educator meets the minimum salary schedule for the 2005-2006 school year.
Figure: 19 TAC §153.1022(d)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 11, 2006.

TRD-200600170
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: January 31, 2006
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.3

The Texas Funeral Service Commission (Commission) adopts an amendment to §201.3 concerning Complaints and Investigations without changes to the proposed text as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 7972) and will not be republished.

The amendment is adopted because Texas Occupations Code §651.202 requires the Commission to adopt rules concerning a complaint to include procedures for the informal and formal hearing process that (1) provide the complainant an opportunity to explain the allegations made in the complaint; (2) provide to the person made the subject of the complaint an opportunity to be heard; and (3) authorize commission staff to dismiss complaints subject to approval by the executive director or the executive director's designee. Existing §201.3 does not outline all procedures in place.

No comments were received.

The amendment is adopted under Texas Occupations Code §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, articles, or codes are affected by the proposal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 13, 2006.

TRD-200600219
O.C. Robbins
Executive Director
Texas Funeral Service Commission
Effective date: February 2, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 936-2466

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING

SUBCHAPTER B. HOSPITAL LICENSE

25 TAC §133.26

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §133.26, concerning hospital licensing fees with changes to the proposed text as published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6905).

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

The Hospital Licensing Program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of the program.

SECTION-BY-SECTION SUMMARY

Amendments to §133.26 contain increases in hospital licensing fees for initial and renewal applications based on the number of licensed beds, as well as for certain types of architectural plan reviews, and include clarification of the language related to application requirements. Specifically, §133.26(b)(1) increases the fee for initial and renewal license applications by $19 per bed; §133.26(b)(1)(A) clarifies beds which must be included in the fee calculation; §133.26(b)(2) requires that the applicant submit the $39 per bed fee when adding a multiple location hospital to the license; §133.26(c)(5) increases the fee per square foot by $100 for architectural plan reviews when the applicant is unable to establish an estimated construction cost; and §133.26(f) adds language authorizing the collection of subscription and convenience fees to recover costs for application processing through the Texas Online authority.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rule during the comment period, which the commission has reviewed and accepts. The commenter was the Texas Hospital Association. The commenter was not against the rules in their entirety.

Comment: One commenter had requested and received an explanation for the increase in fees. The commenter stated that any fee increase should be supported solely by the costs associated with increased regulatory oversight.

Response: The commission disagrees because the level of the increase in fees was based on the criteria listed in the Background and Purpose section of this preamble. No change was made to the rule as a result of this comment.

The department staff on behalf of the commission provided comments and the commission has reviewed and agrees to the following changes to improve the accuracy of the section.

Change: Concerning §133.26(b)(1)(A), the words "and surgical suites" have been deleted as it is not a type of bed and have been replaced with "intermediate care beds, universal care beds, antepartum beds and postpartum beds".

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adopted rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The adopted amendment to §133.26 is authorized by Health and Safety Code, §§12.0111 and 241.025, which require the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§133.26. Fees.

(a) General.

(1) All fees paid to the Department of State Health Services (department) are nonrefundable with the exception of inspection fees for inspections that were not conducted.

(2) All fees shall be paid by check or money order made payable to the Department of State Health Services.

(b) License fees.

(1) The fee for an initial license or a renewal license is $39 per bed based upon the design bed capacity of the hospital. The design bed capacity of a hospital is determined as follows.

(A) The design bed capacity is the maximum number of patient beds that a hospital can accommodate in rooms that comply with the requirements for patient room suites in §133.163 of this title (relating to Spatial Requirements for New Construction) including beds, bassinets or cribs in critical care units (including neonatal nurseries), continuing care nursery beds, hospital-based skilled nursing units, medical nursing units, mental health and chemical dependency nursing units, pediatric and adolescent nursing units, obstetrical suites (including labor/delivery/recovery/postpartum (LDRP) beds), intermediate care beds, universal care beds, antepartum beds and postpartum beds. The design bed capacity does not include labor/delivery/recovery (LDR) beds, newborn nursery bassinets, or recovery beds.

(B) The maximum design bed capacity includes beds that comply with the requirements in §133.163 of this title even if the beds are unoccupied or the space is used for other purposes such as offices or storage rooms, provided such rooms can readily be returned to patient use. All required support and service areas must be maintained in place. For example, the removal of a nurse station in an unused patient bedroom wing of 20 beds would effectively eliminate those 20 beds from the design capacity. Eliminating access to the medical gas

outlets and nurse call would also remove bed(s) from the design capacity.

(C) The number of licensed beds in a multiple occupancy room shall be determined by the design even if the number of beds actually placed in the room is less than the design capacity.

(2) hospital shall submit a license fee for each design bed added as a result of adding a multiple location hospital to its license. The fee is $39 per bed, regardless of the number of months remaining in the license period.

(3) A hospital shall submit an additional license fee with the Final Construction Approval form for each new design bed resulting from an approved construction project. The fee is $39 per bed, regardless of the number of months remaining in the license period. The hospital shall also submit an additional plan review fee if the construction cost increases to the next higher fee schedule according to subsection (c)(4) of this section.

(4) A hospital will not receive a refund of previously submitted fees should the hospital's design capacity decrease as a result of an approved construction project.

(c) Plan review fees. This subsection outlines the fees which must accompany the application for plan review and all proposed plans and specifications covering the construction of new buildings or alterations to existing buildings which must be submitted for review and approval by the department in accordance with §133.167 of this title (relating to Preparation, Submittal, Review and Approval of Plans).

(1) Construction plans will not be reviewed or approved until the required fee and an application for plan review are received by the department.

(2) Plan review fees are based upon the estimated construction project costs which are the total expenditures required for a proposed project from initiation to completion, including at least the following items.

(A) Construction project costs shall include expenditures for physical assets such as:

(i) site acquisition;

(ii) soil tests and site preparation;

(iii) construction and improvements required as a result of the project;

(iv) building, structure, or office space acquisition;

(v) renovation;

(vi) fixed equipment; and

(vii) energy provisions and alternatives.

(B) Construction project costs shall include expenditures for professional services including:

(i) planning consultants;

(ii) architectural fees;

(iii) fees for cost estimation;

(iv) legal fees;

(v) management fees; and

(vi) feasibility study.

(C) Construction project costs shall include expenditures or costs associated with financing, excluding long-term interest, but including:

(i) financial advisor;

(ii) fund-raising expenses;

(iii) lender's or investment banker's fee; and

(iv) interest on interim financing.

(D) Construction project costs shall include expenditure allowances for contingencies including:

(i) inflation;

(ii) inaccurate estimates;

(iii) unforeseen fluctuations in the money market; and

(iv) other unforeseen expenditures.

(3) Regarding purchases, donations, gifts, transfers, and other comparable arrangements whereby the acquisition is to be made for no consideration or at less than the fair market value, the project cost shall be determined by the fair market value of the item to be acquired as a result of the purchase, donation, gift, transfer, or other comparable arrangement.

(4) The plan review fee schedule based on cost of construction is:

(A) $100,000 or less: $300;

(B) $100,001 to $600,000: $850;

(C) $600,001 to 2,000,000: $2,000;

(D) $2,000,001 to 5,000,000: $3,000;

(E) $5,000,001 to 10,000,000: $4,000; and

(F) $10,000,001 and over: $5,000.

(5) If an estimated construction cost cannot be established, the estimated cost shall be based on $225 per square foot. No construction project shall be increased in size, scope, or cost unless the appropriate fees are submitted with the proposed changes.

(d) Construction inspection fees. A fee of $500 and an application for construction inspection for each inspection shall be submitted to the department at least three weeks prior to the anticipated inspection date. Construction inspections will not be conducted until all required fees are received by the department. If additional construction inspections of the proposed project are requested by the hospital, the appropriate additional fees shall be submitted prior to any inspections conducted by the staff of the department. When followup construction inspections are performed to verify plans of correction, the fee shall be submitted upon completion of the inspection.

(e) Cooperative agreement application fee. The application fee for a cooperative agreement is $10,000. The application fee shall be submitted with an application for a cooperative agreement and other documents in accordance with §133.62 of this title (relating to Cooperative Agreements).

(f) Subscription and convenience fee. The department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online, in accordance with Texas Government Code, §2054.111.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2006.

TRD-200600137
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: February 1, 2006
Proposal publication date: October 21, 2005
For further information, please call: (512) 458-7111 x6972

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CHAPTER 143. MEDICAL RADIOLOGIC TECHNOLOGISTS

25 TAC §143.4

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §143.4, concerning medical radiologic technologists fees without changes to the proposed text as published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6908), and the section will not be republished.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

The Medical Radiologic Technologists Certification Program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; and the cost of licenses compared to other similar licenses. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of each program.

SECTION-BY-SECTION SUMMARY

The amendment to §143.4 contains an increase in the fee assessed against licensed medical radiologic technologists for the biennial certificate renewal. Specifically, §143.4(b)(2) increases the fee for a two-year renewal by $20.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adopted rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The adopted amendment to §143.4 is authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2006.

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Cathy Campbell
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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CHAPTER 205. PRODUCT SAFETY

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §205.11, concerning bedding fees, §205.44, concerning labeling of hazardous substances fees, and §205.57, concerning inhalant abuse fees. Section 205.11 is adopted with changes to the proposed text as published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6909). Sections 205.44 and 205.57 are adopted without changes, and the sections will not be republished.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, cost recovery fees are included in these amendments.

Programs with regulatory authority over bedding, labeling of hazardous substances, and inhalant abuse were evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; licensee's ability to pay in comparison to average salary of professionals; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of each program.

SECTION-BY-SECTION SUMMARY

Amendments to §205.11(b) contain increases in bedding permit fees assessed for a two-year term. Specifically, §205.11(b)(1)(A) increases the mattress manufacturer permit fee for less than 2,000 articles per term by $20; §205.11(b)(1)(B) increases the mattress manufacturer permit fee for 2,000 to 9,999 articles per term by $30; §205.11(b)(1)(C) increases the mattress manufacturer permit fee for 10,000 to 19,999 articles per term by $40; §205.11(b)(1)(D) increases the mattress man-

ufacturer permit fee for 20,000 to 29,999 articles per term by $60; §205.11(b)(1)(E) increases the mattress manufacturer permit fee for 30,000 to 49,999 articles per term by $80; §205.11(b)(1)(F) increases the mattress manufacturer permit fee for 50,000 to 100,000 articles per term by $120; §205.11(b)(1)(G) increases the mattress manufacturer permit fee for over 100,000 articles per term by $120; §205.11(b)(3)(A) increases the bedding product manufacturer permit fee for less than 1,000 articles per term by $20; §205.11(b)(3)(B) changes the 2,000 to 9,999 articles per term to 1,000 to 9,999 articles per term to correct a typographical error in the current rule and also increases the bedding product manufacturer permit fee for 1,000 to 9,999 articles per term by $25; §205.11(b)(3)(C) increases the bedding product manufacturer permit fee for 10,000 to 19,999 articles per term by $30; §205.11(b)(3)(D) increases the bedding product manufacturer permit fee for 20,000 to 29,999 articles per term by $40; §205.11(b)(3)(E) increases the bedding product manufacturer permit fee for 30,000 to 49,999 articles per term by $50; §205.11(b)(3)(F) increases the bedding product manufacturer permit fee for 50,000 to 99,999 articles per term by $70; §205.11(b)(3)(G) increases the bedding product manufacturer permit fee for 100,000 to 200,000 articles per term by $120; §205.11(b)(3)(H) increases the bedding product manufacturer permit fee for over 200,000 articles per term by $120; §205.11(b)(6) increases the processor permit fee by $10; §205.11(b)(7) increases the germicidal treatment permit fee by $10; and §205.11(b)(8) increases the arts and crafts permit fee by $5. In addition, amendments to §205.11(c)(1) change the department name from "Texas Department of Health" to "Department of State Health Services" to state the new department name; and the program name from "Product Safety Division" to "Product Safety Program".

Amendments to §205.44 contain an increase in the registration fee for manufacturers of hazardous substances for a two-year term. Specifically, §205.44(f)(1) increases the two-year term fee by $60.

Amendments to §205.57 contain an increase in the inhalant abuse permit fee assessed for a two-year term. Specifically, §205.57(a) increases the two-year term fee by $5. Amendments to §205.57(b) change the department name from "Texas Department of Health or its successor" to "Department of State Health Services" to state the new department name.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenter was an individual. The commenter was not against the rules in their entirety; however, the commenter suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning the fees in §205.11, the commenter recommended that out-of-state mattress manufacturers should pay additional fees above the requested fees to offset the added risk to Texas residents due to the inability to inspect for compliance on-site.

Response: The commission acknowledges the comment, but disagrees, as this comment may involve statutory changes in addition to the rule changes, the commission will need to study this issue. No change was made as a result of the comment.

Comment: Concerning the fees in §205.11, the commenter recommended that out-of-state mattress manufacturers should be required to have an officer of the company certify by notarized statement the approximate numbers of mattresses manufactured per reporting period.

Response: The commission acknowledges the comment, but disagrees with the commenter. The recommendation to require out-of-state mattress manufacturers to submit a notarized certification statement was considered. However, the certification statement currently found on the mattress manufacturer license application form has been reviewed and found to meet the department's requirements. No change was made as a result of this comment.

The department staff on behalf of the commission provided a comment and the commission has reviewed and agrees to the following change that will state the correct program name.

Change: Concerning §205.11(c)(1), the department changed "Product Safety Division" to "Product Safety Program" to reflect the program's name change.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adopted rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER A. BEDDING RULES

25 TAC §205.11

STATUTORY AUTHORITY

The adopted amendment is authorized by Health and Safety Code, §345.043, which authorizes fees for an annual and renewal permit in amounts reasonable and necessary to defray the cost of administering the program; Health and Safety Code, §501.026, which authorizes reasonable registration fees; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license designed to recover all direct and indirect costs; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§205.11. Permit Requirements; Types; Application; Conditions; Suspension.

(a) General requirements.

(1) A person may not manufacture, import, wholesale, distribute, or engage in the business of renovating or selling bedding in this state or for delivery in this state unless the person first obtains a permit for that specific purpose from the department. This requirement does not apply to a custom upholstery business that does not repair or renovate bedding for resale.

(2) A processor may not sell filling material in this state or for delivery in this state unless the person first obtains a permit for that purpose from the department.

(3) A person may not apply a germicidal treatment method to bedding unless the method has been registered with and approved in writing by the department and the person has been issued a germicidal treatment permit by the department.

(4) These permit requirements apply to each separate business location regardless of business name or ownership.

(5) Prior to January 1, 2005, the term of all licenses is one-year and expires on the anniversary of the effective date, unless renewed. Effective January 1, 2005, the term of all licenses is two years. Some licenses will be renewed for a one-year term in 2005, in a manner to be determined by the department and two years thereafter. The department may prorate permit fees as appropriate to provide for a common expiration date for persons holding and/or applying for more than one permit.

(6) Texas Online Fees. The department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with processing license applications specified under this subchapter through Texas Online, in accordance with the Texas Government Code, Chapter 2054, §2054.111 (relating to Use of Texas Online Project).

(b) Types of permit and permit fees.

(1) Mattress Manufacturer Permit. Required of all manufacturers of mattresses or box springs prior to shipping mattresses and/or box springs into or within this state for the purpose of resale. Permit fees are graduated based on the number of articles the manufacturer is requesting authorization to ship during the term of the permit. The fees are set out as follows:

(A) for less than 2,000 articles per term, a two-year term is $220;

(B) 2,000 to 9,999 articles per term, a two-year term is $330;

(C) 10,000 to 19,999 articles per term, a two-year term is $440;

(D) 20,000 to 29,999 articles per term, a two-year term is $660;

(E) 30,000 to 49,999 articles per term, a two-year term is $880;

(F) 50,000 to 100,000 articles per term, a two-year term is $1,320; and

(G) over 100,000 articles per term, a two-year term is $1,320 plus $.03 for each article.

(2) Mattress Renovator Permit. Required of all renovators of mattresses or box springs prior to shipping mattresses and/or box springs in or within this state for the purpose of resale. Permit fees are graduated based on the number of mattresses or box springs the renovator is requesting authorization to ship during the permit period. The fees are set out in subsection (b)(1) of this section.

(3) Bedding Product Manufacturer Permit. Required of all manufacturers of bedding products, other than mattresses and box springs, prior to shipping such articles in or within this state for the purpose of resale. Permit fees are graduated based on the number of articles the manufacturer is requesting authorization to ship during the term of the permit. The fees are set out as follows:

(A) for less than 1,000 articles per term, a two-year term is $220;

(B) 1,000 to 9,999 articles per term, a two-year term is $275;

(C) 10,000 to 19,999 articles per term, a two-year term is $330;

(D) 20,000 to 29,999 articles per term, a two-year term is $440;

(E) 30,000 to 49,999 articles per term, a two-year term is $550;

(F) 50,000 to 99,999 articles per term, a two-year term is $770;

(G) 100,000 to 200,000 articles per term, a two-year term is $1,320; and

(H) over 200,000 articles per term, a two-year term is $1,320 plus $.01 for each article.

(4) Wholesaler/Distributor Permit. Required of all wholesalers and distributors of bedding articles or filling materials prior to shipping such articles or filling materials into this state for the purpose of resale. Permit fees are graduated based on the number of articles or units of filling materials the wholesaler/distributor is requesting authorization to ship during the permit period. The fees are set out in Schedule B, subsection (b)(3) of this section.

(5) Importer Permit. Required of all importers of bedding articles or filling materials prior to shipping such articles or filling materials into this state for the purpose of resale. Permit fees are graduated based on the number of imported articles or units of filling materials the importer is requesting authorization to ship during the permit period. The fees are set out in Schedule B in subsection (b)(3) of this section.

(6) Processor Permit. Required of all manufacturers and/or processors of bulk filling materials prior to selling and shipping such filling materials into this state. The permit fee is $110 for a two-year term.

(7) Germicidal Treatment Permit. Required of all persons prior to the application of a germicidal treatment process, approved by the department, to articles of bedding and/or filling materials to be shipped into or to be sold in this state. The permit fee is $110 for a two-year term.

(8) Arts and Crafts Permit. Required of all persons who manufacture bedding articles other than mattresses (such as pillows, quilts, comforters), have no paid employees, and manufacture less than 250 articles per year for sale in this state. The permit fee is $55 for a two-year term.

(c) Permit application.

(1) Application for an initial permit or to renew an expiring permit must be made through the department on an approved application form which may be obtained from the Product Safety Program, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756.

(2) A separate application must be completed and submitted for each specific permit applied for at each specific business location or plant location.

(3) The appropriate permit fee, payable to the department, must accompany each application.

(4) Additional information that may be required by the department includes the following:

(A) copy of current permits or licenses issued by another state, or states;

(B) copy of most recent bedding inspection report if the business or plant is located in a city, county, state or country that has bedding laws and regulations and conducts inspections;

(C) copies of bedding article labels proposed for use in this state;

(D) samples of products to be shipped into this state;

(E) confirmation of compliance with applicable federal flammability standards for mattresses and mattress pads or test results from an independent testing facility acceptable to the department;

(F) explanation of the germicidal treatment method to be applied to second-hand articles of bedding; and

(G) any other information that the department may determine is necessary for the protection of the public health and safety.

(d) Permit conditions.

(1) Each person required to obtain a permit shall keep accurate and up-to-date records of all articles of bedding shipped into or within this state and such records shall be made available to authorized representatives of the department when requested. The department may require, at the expense of the person, that an independent audit of the records of the person be conducted with the results of such audit provided to the department and the person.

(2) Each person required to obtain a Germicidal Treatment Permit shall:

(A) conspicuously post the permit on the premises of the person's business near the treatment device; and

(B) keep accurate records in a bound log book describing all bedding articles or materials treated, date of treatment, method of treatment, and the name and address of the owner of each item.

(3) Each person required to obtain a permit shall provide product samples in sufficient numbers to determine compliance with these regulations when requested by the department and shall reimburse retail business establishments for samples of bedding or materials taken by authorized representatives of the department.

(4) Each person required to obtain a permit shall provide test results acceptable to the department confirming compliance with federal flammability standards for mattresses and mattress pads when requested by the department.

(5) Each person required to obtain a permit shall maintain each business location in a sanitary condition that complies with §205.9 of this title.

(6) Each person required to obtain a permit shall allow, during normal business hours, an authorized representative or representatives of the department to conduct an announced or unannounced inspection of their place of business for purposes of determining compliance with the Act and regulations and to take samples of bedding articles or materials for inspection and analysis or to be held as evidence of a violation of these regulations.

(7) Each person required to obtain a permit shall allow an authorized representative or representatives of the department to copy records and take photographs of articles of bedding or materials during inspections.

(e) Permit denial, suspension, revocation.

(1) An application for permit issuance or renewal will be denied by the department if the applicant fails or refuses to provide a complete application, pay the appropriate permit fee, provide requested information or product samples or test results, or if the business location or plant location is not in a sanitary condition in violation of the Act and regulations.

(2) An application for permit issuance or renewal may be denied by the department if the applicant has failed to make acceptable progress implementing corrective actions agreed upon by the applicant and the department to remedy previous violations of the Act or these regulations.

(3) A permit may be suspended or revoked by the department if the permit holder fails to maintain the permitted business location or plant location in a sanitary condition, manufactures or renovates and sells mattresses or mattress pads that do not comply with federal flammability standards, fails to germicidally treat articles of used bedding prior to resale, or commits any other or repeated violations of the Act or these regulations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy Campbell
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Department of State Health Services
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SUBCHAPTER C. LABELING OF HAZARDOUS SUBSTANCES

25 TAC §205.44

STATUTORY AUTHORITY

The adopted amendment is authorized by Health and Safety Code, §345.043, which authorizes fees for an annual and renewal permit in amounts reasonable and necessary to defray the cost of administering the program; Health and Safety Code, §501.026, which authorizes reasonable registration fees; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license designed to recover all direct and indirect costs; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. INHALANT ABUSE

25 TAC §205.57

STATUTORY AUTHORITY

The adopted amendment is authorized by Health and Safety Code, §345.043, which authorizes fees for an annual and renewal permit in amounts reasonable and necessary to defray the cost of administering the program; Health and Safety Code, §501.026, which authorizes reasonable registration fees; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license designed to recover all direct and indirect costs; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 229. FOOD AND DRUG

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §229.145 concerning the narcotic treatment program fees, §229.182 concerning food manufacturers, food wholesalers, and warehouse operators fees, §229.372 concerning permitting of retail food establishments fees, and §229.439 concerning the device distributors and device manufacturers fees. Sections 229.182 and 229.439 are adopted with changes to the proposed text as published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6912). Amendments to §229.145 and §229.372 are adopted without changes and the sections will not be republished.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, cost recovery fees are included in these amendments.

Programs with regulatory authority over narcotic treatment, food manufacturers, food wholesalers, warehouse operators, retail food establishments, and device distributors and manufacturers, were evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; licensee's ability to pay in comparison to average salary of professionals; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of each program.

SECTION-BY-SECTION SUMMARY

Amendments to §229.145 contain increases in fees for permits, patient certificates, renewal certificates and delinquency charges for renewing expired permits or submission of late status reports, for narcotic treatment licensees. References to one-year permits have been deleted because the program no longer issues one-year permits. Specifically, §229.145 increases the fees by 40%, including a $300 increase in the initial application fee stated in §229.145(b)(1); §229.145(b)(2) increases the initial patient fee by $50 and increases the patient fee certificate by $20; §229.145(b)(4)(A) increases the delinquency fee for an expired patient certificate by $2; §229.145(b)(4)(B) increases a delinquency fee for submission of a status report after expiration of a patient certificate by $100; §229.145(b)(4)(C) increases the renewal fee of a patient certificate by $20; and §229.145(b)(4)(D) increases the fee for each additional patient requiring a certificate by $20.

Amendments to §229.182(a)(7) change the department name from "Texas Department of Health or its successor" to "Department of State Health Services" to state the new department name. Amendments to §229.182 contain increases in licensing fees for food manufacturers, food wholesalers, and wholesalers with combination products for initial and renewal applications per location, based upon gross annual sales. References to one-year permits have been deleted because the program no longer issues one-year permits. Specifically, new §229.182(b)(1)(A) increases the license fee for food manufacturers with gross annual sales of $0.00 - $9,999.99 by $50; new §229.182(b)(1)(B) increases the license fee for food manufacturers with gross annual sales of $10,000.00 - $24,999.99 by $50; new §229.182(b)(1)(C) increases the license fee for food manufacturers with gross annual sales of $25,000.00 - $99,999.99 by $50; new §229.182(b)(1)(D) increases the license fee for food manufacturers with gross annual sales of $100,000.00 - $199,999.99 by $60; new §229.182(b)(1)(E) increases the license fee for food manufacturers with gross annual sales of $200,000.00 - $999,999.99 by $100; new §229.182(b)(1)(F) increases the license fee for food manufacturers with gross annual sales of $1 million - $9,999,999.99 by $120; new §229.182(b)(1)(G) increases the license fee for food manufacturers with gross annual sales of greater than or equal to $10 million by $180; new §229.182(b)(2)(A) increases the license fee for food wholesalers with gross annual sales of $0.00 - $199,999.99 by $50; new §229.182(b)(2)(B) increases the license fee for food wholesalers with gross annual sales of $200,000.00 - $499,999.99 by $50; new §229.182(b)(2)(C) increases the license fee for food wholesalers with gross annual sales of $500,000.00 - $999,999.99 by $80; new §229.182(b)(2)(D) increases the license fee for food wholesalers with gross annual sales of $1 million - $9,999,999.99 by $100; and new §229.182(b)(2)(E) increases the license fee for food wholesalers with gross annual sales of greater than or equal to $10 million by $150.

Amendments to §229.372 contain increases in retail food establishment permit fees based on gross annual volume of food sales or establishment type. References to one-year permits have

been deleted because the program no longer issues one-year permits. Specifically, §229.372(a)(1)(A) increases the fee for an establishment with a gross annual volume of food sales of $0 - $49,999.99 by 25% or $50; §229.372(a)(1)(B) increases the fee for an establishment with a gross annual volume of sales of $50,000 - $149,999.99 by 25% or $100; §229.372(a)(1)(C) increases the fee for an establishment with a gross annual volume of sales of $150,000 or more by 17% or $100; §229.372(a)(2) increases the fee for a for-profit school contractor by 25% or $50; §229.372(a)(3)(B) increases the fee for mobile food unit by 25% or $50; §229.372(a)(4) increases the fee for a roadside food vendor by 25% or $50; and §229.372(a)(5) increases the fee for a child care center by 25% or $50.

Amendments to §229.439 contain increases in fees for licenses and renewal licenses for device distributors or manufacturers. References to one-year permits have been deleted because the program no longer issues one-year permits. Specifically, §229.439 increases the fees by 20%, §229.439(a)(1)(A) increases the license fee for distributors with gross annual sales of $0 - $499,999.99 by $80; §229.439(a)(1)(B) increases the license fee for distributors with gross annual sales of $500,000 - $9,999,999.99 by $180; §229.439(a)(1)(C) increases the license fee for distributors with gross annual sales greater than or equal to $10 million by $280; §229.439(a)(3)(A) increases the license fee for manufacturers with gross annual sales of $0 - 499,999.99 by $80; §229.439(a)(3)(B) increases the license fee for manufacturers with gross annual sales of $500,000 - $9,999,999.99 by $360; and §229.439(a)(3)(C) increases the license fee for manufacturers with gross annual sales of greater than or equal to $10 million by $600.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The department's responses to the comments are discussed in the summary of comments.

The comment on the proposed rule §229.145 was submitted by Texas Clinic Fulton. The commenter was generally not in favor of the amendment to the rule requiring increased patient fees for operating narcotic treatment programs.

Comment: Concerning the patient fee increases in §229.145(b), the commenter objected to the increased patient fees and requested that the proposed fee increases be withdrawn altogether or, at a minimum, delayed until 2007 to provide an adjustment period and to eliminate the cost advantage to programs that paid for 2006 fees in 2005, at 2005 fee rates. The commenter also sought an annual, rather than biennial, payment schedule for patient fees.

Response: The commission disagrees with this comment. Fees based upon the number of patients link a program's increased costs to the ability to generate revenue. At the same time, the department has been directed to recover 100% of its regulatory costs, including indirect costs. The increased fees recover regulatory costs associated with increases in employee pay, travel reimbursement, and allows for recovery of appropriations. No change was made to the rule as a result of the comment.

The comments on the proposed rule §229.182 were submitted by Glacier Water and National Automatic Merchandising Association. The commenters were not against the rule in its entirety; however, the commenters suggested recommendations for change as discussed in the comments.

Comment: Concerning the fee increase in §229.182(b)(1)(A), both commenters stated that the fees were being significantly increased for water vending machines. The commenters also felt that this increase is disproportionate to the increases for food manufacturers in other fee categories.

Response: The commission disagrees with the comments, because the department has been directed to recover 100% of its regulatory costs, including indirect costs. The increased fees recover regulatory costs associated with increases in employee pay, travel reimbursement, and allows for recovery of appropriations. With regard to the comment concerning the disproportionate increase, the lowest fee category was recovering, at a minimum, the cost of printing the license. This does not even include the cost of conducting an inspection. This fee schedule was raised to cover at least the cost to print the license. No change was made to the rule as a result of the comments.

Comment: Concerning the fee increase in §229.182(b)(1)(A), one commenter proposed that a separate category for water vending machines be created under the heading of Food Manufacturers.

Response: The commission disagrees with the comment, because this comment may involve statutory changes in addition to rule changes. The commission will study this issue and propose changes at a later date, if warranted. No change was made as a result of this comment.

The department staff on behalf of the commission provided a comment and the commission has reviewed and agrees to the following changes that will clarify the fee structure.

Change: Concerning §229.182(b)(1)(A)-(G), 229.182(b)(2)(A)-(E), 229.182(b)(3)(A)-(E), and 229.182(b)(5)(A)-(E), language was added to clarify the fees for a two-year license, a two-year license that is amended due to ownership, and a two-year license that is amended during the current licensure period due to minor changes.

The comment on the proposed rule §229.372 was submitted by the Gulf Coast Retailers Association. The commenter was against the fee increases; however, the commenter suggested recommendations for changes as discussed in the comments.

Comment: Concerning the retail food establishment fee increases in general, the commenter expressed opposition to the fee increases at the present time. The commenter stated that members of his organization have experienced increases in fuel costs and have supported the relief efforts of Hurricane Katrina. The commenter suggested that the fee increases be postponed until January 2007.

Response: The commission disagrees with the comments, because the department has been directed by the legislature to recover 100% of its regulatory costs, including indirect costs, and must do so at this time. The increased fees recover regulatory costs associated with increase in employee pay, travel, reimbursement, and allows for recovery of appropriations. In addition, the department has not raised the fees since March 2000. No change was made to the rule as a result of this comment.

The department staff on behalf of the commission provided a comment and the commission has reviewed and agrees to the following changes that will clarify license fees associated with amending a license.

Change: Concerning §§229.439(a)(1)(A)-(C), 229.439(a)(2)(A)-(E), and 229.439(a)(3)(A)-(C), the section was clarified to distin-

guish between license fees that apply to a two-year license, a two-year license that is amended due to a change in ownership, and a two-year license that is amended during the current licensure period due to minor changes.

No other comments were received regarding the amended sections as proposed.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adopted rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER J. MINIMUM STANDARDS FOR NARCOTIC TREATMENT PROGRAMS

25 TAC §229.145

STATUTORY AUTHORITY

The adopted amendment is authorized by Health and Safety Code, §§12.0111, 431.204, 431.222, 431.276, 432.009, 437.0125, 441.003, and 466.023, which require the department to charge fees for issuing or renewing a license or permit; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy Campbell
General Counsel
Department of State Health Services
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Proposal publication date: October 21, 2005
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER L. LICENSURE OF FOOD MANUFACTURERS, FOOD WHOLESALERS, AND WAREHOUSE OPERATORS

25 TAC §229.182

STATUTORY AUTHORITY

The adopted amendment is authorized by Health and Safety Code, §§12.0111, 431.204, 431.222, 431.276, 432.009, 437.0125, 441.003, and 466.023, which require the department to charge fees for issuing or renewing a license or permit; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§229.182. Licensing/Registration Fee and Procedures.

(a) License/registration required.

(1) A person who manufactures food must obtain a food manufacturer's license for each place of business as described in subsection (b)(1) or (2) of this section; also, a food manufacturer who distributes its own food, and/or food from another manufacturer must only obtain a food manufacturer's license. When calculating the amount of the licensing fee, the manufacturer must include the total for all food manufactured and wholesaled from the place of business.

(2) A person who distributes food, but who does not manufacture food, must obtain a food wholesaler's license for each place of business as described in subsection (b)(3) or (4) of this section.

(3) A person who distributes food, but who does not manufacture food, and who chooses to store that food with a warehouse operator licensed under subsection (b)(8) or (9) of this section, must register as a food wholesaler under subsection (b)(7) of this section.

(4) A person who distributes food and drugs, food and medical devices, or food and drugs and medical devices, must obtain a wholesaler with combination products license, as described in subsection (b)(5) or (6) of this section, for each place of business; this license is required even if the products are stored in a separate warehouse or with a warehouse operator licensed under subsection (b)(8) or (9) of this section.

(5) A warehouse operator storing food for a registered food wholesaler must obtain a warehouse operator license as described in subsection (b)(8) or (9) of this section for each such warehouse. A warehouse operator who distributes only food is required to obtain only a warehouse operator license. A warehouse operator who distributes combination products (food and drugs, food and medical devices, or food, drugs, and medical devices) and is also required to obtain a wholesaler's license under subsection (b)(5) or (6) of this section will be issued only one license. The license fee to be paid will be the higher of the two applicable fees.

(6) A warehouse operated by a food manufacturer which is totally separate from any manufacturing location, including locations from which foods are held for limited periods of time for distribution, must obtain a warehouse operator license as described in subsection (b)(8) or (9) of this section for each such warehouse.

(7) A retail food store that also manufactures food and is required to be permitted by the Department of State Health Services (department) pursuant to Health and Safety Code, Chapter 437, and the Texas Food Establishment Regulations, §229.370 and §229.371 of this title (relating to Permitting Retail Food Establishments), will be issued only one license or permit. The license or permit fee to be paid will be the higher of the two applicable fees.

(8) A wholesaler who distributes combination products and who is also required to be licensed as a warehouse operator under this section will be issued only one license. The license fee to be paid will be the higher of the two applicable fees.

(9) A food manufacturer required to be licensed exclusively pursuant to Health and Safety Code, Chapter 432, relating to Food, Drug, Device and Cosmetic Salvage, Chapter 433, relating to Meat and Poultry Inspection, Chapter 435, relating to Dairy Products, Chapter 436, relating to Aquatic Life, or Chapter 440, relating to Frozen Desserts, is not required to license pursuant to this chapter.

(b) Licensing and registration fees.

(1) Food manufacturer. No person may operate or conduct business as a food manufacturer in this state without first obtaining a license from the department. Licenses issued under this subsection

expire two years from the start date of the regulated activity. All applicants for a new or renewal food manufacturer's license shall pay a license fee.

(A) For each place of business having gross annual manufactured food sales of $0.00 - $9,999.99, the fees are:

(i) $100 for a two-year license;

(ii) $100 for a two-year license that is amended due to a change of ownership; and

(iii) $50 for a two-year license that is amended during the current licensure period due to minor changes.

(B) For each place of business having gross annual manufactured food sales of $10,000 - $24,999.99, the fees are:

(i) $150 for a two-year license;

(ii) $150 for a two-year license that is amended due to a change of ownership; and

(iii) $75 for a two-year license that is amended during the current licensure period due to minor changes.

(C) For each place of business having gross annual manufactured food sales of $25,000 - $99,999.99, the fees are:

(i) $250 for a two-year license;

(ii) $250 for a two-year license that is amended due to a change of ownership; and

(iii) $125 for a two-year license that is amended during the current licensure period due to minor changes.

(D) For each place of business having gross annual manufactured food sales of $100,000 - $199,999.99, the fees are:

(i) $560 for a two-year license;

(ii) $560 for a two-year license that is amended due to a change of ownership; and

(iii) $280 for a two-year license that is amended during the current licensure period due to minor changes.

(E) For each place of business having gross annual manufactured food sales of $200,000 - $999,999.99, the fees are:

(i) $900 for a two-year license;

(ii) $900 for a two-year license that is amended due to a change of ownership; and

(iii) $450 for a two-year license that is amended during the current licensure period due to minor changes.

(F) For each place of business having gross annual manufactured food sales of $1 million - $9,999,999.99, the fees are:

(i) $1,120 for a two-year license;

(ii) $1,120 for a two-year license that is amended due to a change of ownership; and

(iii) $560 for a two-year license that is amended during the current licensure period due to minor changes.

(G) For each place of business having gross annual manufactured food sales greater than or equal to $10 million, the fees are:

(i) $1,680 for a two-year license;

(ii) $1,680 for a two-year license that is amended due to a change of ownership; and

(iii) $840 for a two-year license that is amended during the current licensure period due to minor changes.

(2) Food wholesaler. No person may operate or conduct business as a food wholesaler in this state without first obtaining a food wholesaler's license from the department. Licenses issued under this subsection expire two years from the start date of the regulated activity. Except as provided for in paragraph (4) of this subsection, all food wholesalers shall pay a license fee.

(A) For each place of business having gross annual food sales of $0.00 - $199,999.99, the fees are:

(i) $250 for a two-year license;

(ii) $250 for a two-year license that is amended due to a change of ownership; and

(iii) $125 for a two-year license that is amended during the current licensure period due to minor changes.

(B) For each place of business having gross annual food sales of $200,000 - $499,999.99, the fees are:

(i) $450 for a two-year license;

(ii) $450 for a two-year license that is amended due to a change of ownership; and

(iii) $225 for a two-year license that is amended during the current licensure period due to minor changes.

(C) For each place of business having gross annual food sales of $500,000 - $999,999.99, the fees are:

(i) $680 for a two-year license;

(ii) $680 for a two-year license that is amended due to a change of ownership; and

(iii) $340 for a two-year license that is amended during the current licensure period due to minor changes.

(D) For each place of business having gross annual food sales of $1 million - $9,999,999.99, the fees are:

(i) $900 for a two-year license;

(ii) $900 for a two-year license that is amended due to a change of ownership; and

(iii) $450 for a two-year license that is amended during the current licensure period due to minor changes.

(E) For each place of business having gross annual food sales of greater than or equal to $10 million, the fees are:

(i) $1,350 for a two-year license;

(ii) $1,350 for a two-year license that is amended due to a change of ownership; and

(iii) $675 for a two-year license that is amended during the current licensure period due to minor changes.

(3) Wholesaler with combination products. A person who is required to be licensed as a food wholesaler under this section and who is also required to be licensed as a wholesale distributor of drugs under §229.252(a)(1) of this title or as a device distributor under §229.439(a)(1) of this title shall pay a combined licensure fee for each place of business. The licensure fee shall be based on the combined gross annual sales of these regulated products (foods, drugs, and/or devices).

(A) For each place of business having combined gross annual sales of $0.00 - $199,999.99, the fees are:

(i) $400 for a two-year license;

(ii) $400 for a two-year license that is amended due to a change of ownership; and

(iii) $200 for a two-year license that is amended during the current licensure period due to minor changes.

(B) For each place of business having combined gross annual sales of $200,000 - $499,999.99, the fees are:

(i) $600 for a two-year license;

(ii) $600 for a two-year license that is amended due to a change of ownership; and

(iii) $300 for a two-year license that is amended during the current licensure period due to minor changes.

(C) For each place of business having combined gross annual sales of $500,000 - $999,999.99, the fees are:

(i) $800 for a two-year license;

(ii) $800 for a two-year license that is amended due to a change of ownership; and

(iii) $400 for a two-year license that is amended during the current licensure period due to minor changes.

(D) For each place of business having combined gross annual sales of $1 million - $9,999,999.99, the fees are:

(i) $1,000 for a two-year license;

(ii) $1,000 for a two-year license that is amended due to a change of ownership; and

(iii) $500 for a two-year license that is amended during the current licensure period due to minor changes.

(E) For each place of business having combined gross annual sales greater than or equal to $10 million, the fees are:

(i) $1,500 for a two-year license;

(ii) $1,500 for a two-year license that is amended due to a change of ownership; and

(iii) $750 for two-year license that is amended during the current licensure period due to minor changes.

(4) Food wholesaler registration. Except as provided in paragraph (3) of this subsection, a food wholesaler is not required to obtain a license under this section for a place of business if all of the food distributed from that place of business will be stored in a warehouse licensed under this section. A food wholesaler that is not required to obtain a license for a place of business under this section shall register each place of business with the department pursuant to subsection (d)(2) of this section, but only one registration fee must be paid by each such food wholesaler. A food wholesaler who meets this subsection's requirements shall pay a registration fee of $100. A registration issued under this subsection expires two years from the start date of the regulated activity.

(5) Warehouse operator. No person may operate or conduct business as a warehouse operator in this state without first obtaining a license from the department. Licenses issued under this subsection expire two years from the start date of the regulated activity. License fees are based on the maximum amount of square feet dedicated to food storage during the licensing period. A warehouse operator shall pay a license fee.

(A) For each place of business having food storage of 0 - 6,000 square feet, the fees are:

(i) $350 for a two-year license;

(ii) $350 for a two-year license that is amended due to a change of ownership; and

(iii) $175 for a two-year license that is amended during the current licensure period due to minor changes.

(B) For each place of business having food storage of 6,001 - 24,000 square feet, the fees are:

(i) $700 for a two-year license;

(ii) $700 for a two-year license that is amended due to a change of ownership; and

(iii) $350 for a two-year license that is amended during the current licensure period due to minor changes.

(C) For each place of business having food storage of 24,001 - 75,000 square feet, the fees are:

(i) $1,050 for a two-year license;

(ii) $1,050 for a two-year license that is amended due to a change of ownership; and

(iii) $525 for a two-year license that is amended during the current licensure period due to minor changes.

(D) For each place of business having food storage of 75,001 - 250,000 square feet, the fees are:

(i) $1,400 for a two-year license;

(ii) $1,400 for a two-year license that is amended due to a change of ownership; and

(iii) $700 for a two-year license that is amended during the current licensure period due to minor changes.

(E) For each place of business having food storage of 250,001 or more square feet, the fees are:

(i) $2,000 for a two-year license;

(ii) $2,000 for a two-year license that is amended due to a change of ownership; and

(iii) $1,000 for a two-year license that is amended during the current licensure period due to minor changes.

(6) A firm that has more than one business location may request a one-time proration of fees when applying for a license for each new location. Upon approval by the department, the expiration date of the license for the new location will be established the same as the firm's previously licensed locations.

(7) For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(8) All license/registration fees paid under this section are non-refundable.

(9) If the license/registration category changes during the license period, the license shall be renewed in the proper category at the time of renewal.

(c) License/registration forms. License/registration forms may be obtained from the department, located at 1100 West 49th Street, Austin, Texas 78756-3182, or from the website at www.tdh.state.tx.us/bfds/lic/apps.html.

(d) License/registration application. All food manufacturers, food wholesalers, and warehouse operators shall file a license application on a form authorized by the department.

(1) The application form shall be signed and verified, and shall contain the following information:

(A) the name of the legal entity to be licensed, including the name under which the business is conducted;

(B) the physical address of the place of business;

(C) the mailing address of the place of business;

(D) if a sole proprietorship, the name of the proprietor; if a partnership, the names of all partners; if a corporation, the name of the corporation, the date and place of incorporation and name and address of its registered agent in the state; or if any other type of association, the names of the principals of such association;

(E) the names of those individuals in an actual administrative capacity which, in the case of a sole proprietorship shall be the managing proprietor; in a partnership, the managing partner; in a corporation, the officers and directors; in any other association, those in a managerial capacity; and

(F) a list of categories of gross annual sales or square footage as applicable, which must be marked and adhered to by the licensee in the determination and paying of the license fee.

(2) Food wholesalers who meet the requirements to register under subsection (b)(7) of this section, must submit a registration form authorized by the department which shall be signed and verified, and contain the following information:

(A) the name of the legal entity to be registered, including the name under which the business is conducted;

(B) the name, telephone number, and physical addresses of the licensed warehouses where the food wholesaler's food products are or will be stored;

(C) the physical address where the food wholesaler's distribution records are located and available for review upon inspection;

(D) the mailing address and telephone number where the food wholesaler may be contacted; and

(E) a description of the type of food products being distributed by the food wholesaler.

(e) Two or more establishments. If the food manufacturer, food wholesaler, or warehouse operator operates more than one place of business, each place of business shall be licensed separately by listing the name and address of each place of business on the license application.

(f) Issuance of license/registration. The department may license/register a manufacturer, food wholesaler, or warehouse operator who meets the requirements of this section and §229.183 of this title (relating to Minimum Standards for Licensure/Registration).

(1) The initial license/registration shall be valid for two years from the date the license/registration was issued.

(2) The renewal license/registration shall be valid for two years from the date the license/registration was issued.

(3) A current license/registration shall only be issued when all past due fees and late fees are paid.

(g) Renewal of license/registration.

(1) For each licensing/registration period, the food manufacturer, food wholesaler, or warehouse operator shall renew its license/registration as applicable following the requirements of this section and §229.183 of this title.

(2) A person who holds a license/registration issued by the department under the Health and Safety Code shall renew the license/registration by filing an application for renewal on a form authorized by the department accompanied by the appropriate licensing/registration fee. A licensee/registrant must file for renewal before the expiration date of the current license. A person who files a renewal application after the expiration date must pay an additional $100 as a delinquency fee.

(3) Failure to submit the renewal during the licensing/registration period may subject the food manufacturer, food wholesaler, or warehouse operator to the offense provisions under the Health and Safety Code, Chapter 431, to the provision of §229.184 of this title (relating to the Refusal, Revocation, or Suspension of License/Registration), and to the provisions of §229.222 of this title (relating to Penalties).

(h) Amendment of license/registration.

(1) Fees. A license or registration that is amended during the licensing or registration period, including a change of name, ownership (change in legal entity), or a notification of a change in the location of a licensed or registered place of business required under the Health and Safety Code, §431.2251, will require a new application and submission of license or registration fees as outlined in subsection (b) of this section.

(2) Change in name, ownership, status, or location of business.

(A) Not later than the 31st day before the date of the change in the name, status, or location of a licensed/registered place of business, the license/registration holder shall provide written notice to the department of the intended change. The notice shall include, as applicable:

(i) The new name of the legal entity to be licensed or registered, including the name under which the business is conducted;

(ii) The physical and mailing address of the new location;

(iii) The name and physical address of the licensed warehouse where the food wholesaler's food products will be stored;

(iv) The physical address where the food wholesaler's distribution records are located and available for review upon inspection; and

(v) The mailing address and telephone number where the food wholesaler may be contacted.

(B) Not later than the 10th day after completion of the change of location, the licensee or registrant shall forward to the department the name and residence address of the individual in charge of the new place of business.

(C) Notice is considered adequate if the licensee or registrant provides the intent and verification notices to the department by certified mail, return receipt requested, mailed to the department at 1100 West 49th Street, Austin, Texas 78756-3182.

(i) This section does not apply to:

(1) a person, firm, or corporation that harvests, packages, washes, or ships raw fruits or vegetables;

(2) a direct seller who is not otherwise engaged in manufacturing;

(3) a person engaged solely in the distribution of alcoholic beverages in sealed containers by holders of licenses or permits issued under the Alcoholic Beverage Code, Chapters 19, 20, 21, 23, 64, or 65;

(4) a food service establishment or a commissary which distributes food primarily intended for immediate consumption on the premises of a retail outlet under common ownership unless the business regularly engages in the labeling, combining, and purifying of food which is either sold for resale or packaged for sale in other than individual portions; or

(5) a restaurant that provides food for immediate human consumption to a political subdivision or to a licensed nonprofit organization if the restaurant would not otherwise be considered a food wholesaler.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy Campbell
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Department of State Health Services
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SUBCHAPTER U. PERMITTING RETAIL FOOD ESTABLISHMENTS

25 TAC §229.372

STATUTORY AUTHORITY

The adopted amendment is authorized by Health and Safety Code, §§12.0111, 431.204, 431.222, 431.276, 432.009, 437.0125, 441.003, and 466.023, which require the department to charge fees for issuing or renewing a license or permit; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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SUBCHAPTER X. LICENSING OF DEVICE DISTRIBUTORS AND MANUFACTURERS

25 TAC §229.439

STATUTORY AUTHORITY

The adopted amendment is authorized by Health and Safety Code, §§12.0111, 431.204, 431.222, 431.276, 432.009, 437.0125, 441.003, and 466.023, which require the department to charge fees for issuing or renewing a license or permit; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§229.439. Licensure Fees.

(a) License fee.

(1) No person may operate or conduct business as a device distributor without first obtaining a license from the department. All applicants for a device distributor license or a renewal license shall pay a licensing fee. All fees are nonrefundable. Licenses are issued for two-year terms. A license shall only be issued when all past due fees and delinquency fees are paid. License fees are based on gross annual device sales.

(A) For a distributor with gross annual device sales of $0 - $499,999.99, the fees are:

(i) $480 for a two-year license;

(ii) $480 for a two-year license that is amended due to a change of ownership; and

(iii) $240 for a two-year license that is amended during the current licensure period due to minor changes.

(B) For a distributor with gross annual device sales of $500,000 - $9,999,999.99, the fees are:

(i) $1,080 for a two-year license;

(ii) $1,080 for a two-year license that is amended due to a change of ownership; and

(iii) $540 for a two-year license that is amended during the current licensure period due to minor changes.

(C) For a distributor with gross annual device sales greater than or equal to $10 million, the fees are:

(i) $1,680 for a two-year license;

(ii) $1,680 for a two-year license that is amended due to a change of ownership; and

(iii) $840 for a two-year license that is amended during the current licensure period due to minor changes.

(2) A person who is required to be licensed as a device distributor under this section and who is also required to be licensed as a

wholesale drug distributor under §229.252(a)(1) of this title (relating to Licensing Fee and Procedures) or as a wholesale food distributor under §229.182(a)(3) of this title (relating to Licensing Fee and Procedures) shall pay a combined licensure fee for each place of business. All fees are nonrefundable. Licenses are issued for two-year terms. License fees are based on the combined gross annual sales of these regulated products (foods, drugs, and/or devices).

(A) For each place of business having combined gross annual sales of $0 - $199,999.99, the fees are:

(i) $400 for a two-year license;

(ii) $400 for a two-year license that is amended due to a change of ownership; and

(iii) $200 for a two-year license that is amended during the current licensure period due to minor changes.

(B) For each place of business having combined gross annual sales of $200,000 - $499,999.99, the fees are:

(i) $600 for a two-year license;

(ii) $600 for a two-year license that is amended due to a change of ownership; and

(iii) $300 for a two-year license that is amended during the current licensure period due to minor changes.

(C) For each place of business having combined gross annual sales of $500,000 - $999,999.99, the fees are:

(i) $800 for a two-year license;

(ii) $800 for a two-year license that is amended due to a change of ownership; and

(iii) $400 for a two-year license that is amended during the current licensure period due to minor changes.

(D) For each place of business having combined gross annual sales of $1 million - $9,999,999.99, the fees are:

(i) $1,000 for a two-year license;

(ii) $1,000 for a two-year license that is amended due to a change of ownership; and

(iii) $500 for a two-year license that is amended during the current licensure period due to minor changes.

(E) For each place of business having combined gross annual sales greater than or equal to $10 million, the fees are:

(i) $1,500 for a two-year license;

(ii) $1,500 for a two-year license that is amended due to a change of ownership; and

(iii) $750 for a two-year license that is amended during the current licensure period due to minor changes.

(3) No person may operate or conduct business as a device manufacturer in this state without first obtaining a license from the department. All applicants for a device manufacturer license or renewal license shall pay a licensing fee. All fees are nonrefundable. Licenses are issued for two-year terms. License fees are based on gross annual device sales.

(A) For a manufacturer with gross annual device sales of $0 - $499,999.99, the fees are:

(i) $480 for a two-year license;

(ii) $480 for a two-year license that is amended due to a change of ownership; and

(iii) $240 for a two-year license that is amended during the current licensure period due to minor changes.

(B) For a manufacturer with gross annual device sales of $500,000 - $9,999,999.99, the fees are:

(i) $2,160 for a two-year license;

(ii) $2,160 for a two-year license that is amended due to a change of ownership; and

(iii) $1,080 for a two-year license that is amended during the current licensure period due to minor changes.

(C) For a manufacturer with gross annual device sales greater than or equal to $10 million, the fees are:

(i) $3,600 for a two-year license;

(ii) $3,600 for a two-year license that is amended due to a change of ownership; and

(iii) $1,800 for a two-year license that is amended during the current licensure period due to minor changes.

(b) Texas Online. Applicants may submit applications and renewal applications for a license under these sections electronically by the Internet through Texas Online at www.texasonline.state.tx.us. The department is authorized to collect fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(c) Exemption from licensing fees. A person is exempt from the licensing fees required by this section if the person is:

(1) licensed under §289.252 of this title (relating to Licensing of Radioactive Material) or registered under §289.226 of this title (relating to Registration of Radiation Machine Use and Services) and engages only in the following types of device distribution or manufacturing:

(A) the manufacture or distribution of radiation machines which are devices; or

(B) the manufacture or distribution of devices which contain radioactive materials; or

(2) a charitable organization, as described in the Internal Revenue Code of 1986, §501(c)(3), or a nonprofit affiliate of the organization, to the extent otherwise permitted by law.

(d) Sale of food, drugs, or devices. This section includes the manufacture, production, processing, packaging, exposure, offer, possession, and holding of any of the regulated articles for sale; the sale, dispensing, and giving of any regulated article; and supplying or applying of any regulated articles in the operation of any food, drug, or device place of business.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 289. RADIATION CONTROL
SUBCHAPTER D. GENERAL

25 TAC §289.204

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §289.204, concerning radiation control fees with changes to the proposed text as published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6921).

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, cost recovery fees are included in this amendment.

The radiation control program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; the percentage of revenue above costs for the specific program; and the cost of permits compared to other similar permits. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also evaluated to determine the direct and indirect costs of each program.

SECTION-BY-SECTION SUMMARY

The amendment adds references to §289.232 of this title (relating to Radiation Control Regulations for Dental Radiation Machines) and §289.233 of this title (relating to Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine) in §289.204(b)(1)(C) for clarification; and adds the words "and Intense-Pulsed Light Devices" after the word "Lasers" at the end of the subparagraph to state the correct title of the rule being cited.

In addition, the amendment changes the agency name from "Texas Department of Health, Bureau of Radiation Control" to "Radiation Control, Department of State Health Services" to state the new department name in §289.204(d)(8).

Amendments to §289.204 contain increases in fees for certificates of registration, radioactive material licenses; emergency planning and implementation; and other regulatory services. Specifically, the categories of fees contained in §289.204(e) for radioactive materials licenses increase by 28%, ranging from a two-year fee of $704 for a gauge general license acknowledgement to a two-year fee of $273,800 for a Class III waste processing license. Fees contained in §289.204(f) for evaluation of a sealed source or device increase by 28%, ranging from $2,309 for an amendment requiring reevaluation of a sealed source to $9,258 for an initial evaluation of a device. Fees contained in §289.204(m) for uranium recovery and byproduct material disposal facility licenses are also increased by 28% and range from a two-year fee of $52,012 for an in situ license in post-closure to a two-year fee of $463,096 for a new application for a conventional uranium recovery license. In addition, the one-time fee adjustments contained in §289.204(o) for uranium recovery and byproduct material disposal facility licenses are increased by 28% and range from $11,235 for the addition of a wellfield on contiguous property to $71,651 for addition of an in situ satellite site. The fees contained in §289.204(j) for certificates of registration are increased by 15% for these categories of machine type or use: computerized tomography, fluoroscopy, accelerators, radiographic machines only, industrial radiography, other industrial machines, morgues and educational facilities with machines for non-human use, and other radiation machine services. The fees for these categories range from a two-year fee of $253 for radiation machine services to a two-year fee of $1,656 for computerized tomography. The fees contained in §289.204(j) for certificates of registration are increased by 10% for these categories of machine type or use: dental radiographic only, podiatric radiographic only, veterinary, and minimal threat machines. The fees for these categories range from a two-year fee of $264 for podiatric radiographic machines to $374 for minimal threat machines.

Section §289.204(j) adds language to clarify that the fees specified in this section are the applicable fees for persons using only dental radiographic machines and for persons using veterinary radiographic machines, including computerized tomography, fluoroscopy, and accelerators.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including the following: The Cosmetic Dental Center; Associated Wireline Services; Cardiovascular Center, P.A.; and Radiation Technology. The commenters were against the fee increases; however, one commenter suggested a recommendation for change as discussed in the summary of comments.

Comment: Concerning the Radiation Control fee increases in general, 20 commenters expressed strong opposition to the fee increases.

Response: The commission disagrees with the comments, because the department has been directed by the legislature to recover 100% of its regulatory costs, including indirect costs. The increased fees recover regulatory costs associated with appropriations and increases in employee pay and travel reimbursement. No change was made to the rule as a result of the comments.

Comment: Concerning the radioactive material license fee increases, three commenters suggested that the commission should allow consideration for small businesses within the assessment of increasing fees. One commenter stated that small businesses should be given the opportunity to submit forms for certification of small entity status for the purpose of annual fees as used by the United States Nuclear Regulatory Commission and Oklahoma Department of Environmental Quality. In addition, the commenter states that if Texas would adopt such rules it would be more equitable for the licensees.

Response: The commission disagrees with the comments. The Radiation Control Act, Health and Safety Code, Chapter 401,

provides the commission with the authority to adopt rules related to radiation control functions and requires that fees not exceed actual regulatory costs. Providing allowances for small businesses shifts costs to other licensees that incur the same regulatory costs, but that do not qualify as a small business, creating an inequity among licensees of the same type of radioactive material use. No change was made to the rule as a result of the comments.

Comment: Concerning the radiation control fees, four commenters expressed strong opposition to the fee increase because of continued delay or reduction in reimbursement for services to patients from Medicare and insurance companies.

Response: The commission disagrees with the comments, because the department has been directed to recover 100% of its regulatory costs and has no control over the delay or reduction in reimbursement of services to patients from Medicare and insurance companies. No change was made to the rule as a result of the comments.

The department staff on behalf of the commission provided a comment and the commission has reviewed and agrees to the following change that will correctly reflect reference to the rule effective date.

Change: Concerning §289.204(j), the department's staff deleted the January 1, 2006, effective date from the rule text and replaced it with "the effective date of this section" to accurately reflect the actual effective date of this amended section, rather than an anticipated effective date.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adopted rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The adopted amendment to §289.204 is authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; Health and Safety Code, §401.301, which allows the department to collect fees for radiation control licenses and registrations that it issues; Health and Safety Code, §401.302, which allows the department to collect fees from each nuclear reactor or other fixed nuclear facility in the state that uses special nuclear material; Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§289.204. Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services.

(a) Purpose. The requirements in this section establish fees for licensing, registration, emergency planning and implementation, and other regulatory services, and provide for their payment.

(b) Scope. Except as otherwise specifically provided, the requirements in this section apply to any person who is the following:

(1) an applicant for, or holder of:

(A) a radioactive material license issued in accordance with §289.252 of this title (relating to Licensing of Radioactive Material), §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities), §289.259 of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM)), or §289.260 of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities); or

(B) a general license acknowledgment issued in accordance with §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgments); or

(C) a certificate of registration for radiation machines and/or services, or sources of laser radiation, issued in accordance with §289.226 of this title (relating to Registration of Radiation Machine Use and Services), §289.230 of this title (relating to Certification of Mammography Systems and Accreditation of Mammography Facilities), a certificate of registration for dental radiation machines in accordance with §289.232 of this title (relating to Radiation Control Regulations for Dental Radiation Machines), a certificate of registration for radiation machines used in veterinary medicine in accordance with §289.233 of this title (relating to Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine), or §289.301 of this title (relating to Registration and Radiation Safety Requirements for Lasers and Intense-Pulsed Light Devices); or

(2) the holder of a fixed nuclear facility construction permit or operating license issued by the United States Nuclear Regulatory Commission (NRC) in accordance with Title 10, Code of Federal Regulations, Part 50; or

(3) the operator of any other fixed nuclear facility.

(c) Definitions. The following words and terms when used in this section shall have the following meaning, unless the context clearly indicates otherwise.

(1) Contiguous properties--Those locations adjacent to an existing licensed or permitted area.

(2) Decontamination services--Providing deliberate operations to reduce or remove residual radioactivity from equipment, facilities, and land owned, possessed, or controlled by other persons to a level that permits release of equipment, facilities, and land for unrestricted use and/or termination of a license.

(3) Emergency planning and implementation--The development and application of those capabilities necessary for the protection of the public and the environment from the effects of an accidental or uncontrolled release of radioactive materials, including the equipping, training and periodic retraining of response personnel.

(4) Fixed nuclear facility--The following are considered fixed nuclear facilities:

(A) any nuclear reactor(s) at a single site;

(B) any facility designed or used for the assembly or disassembly of nuclear weapons; or

(C) any other facility using special nuclear material for which the agency conducts off-site environmental surveillance and/or emergency planning and implementation to protect the public health and safety or the environment.

(5) Limited manufacturer--A manufacturer/distributor of radioactive material that is not required to submit a decommissioning funding plan or an emergency plan in accordance with §289.252 of this title.

(6) Post-closure--The time period after which closure activities have been completed by the conventional mill licensee and prior to transfer of land ownership of tailings disposal sites to the State of Texas or the United States of America and termination of the license or after which confirmatory surveys have been conducted by the agency of an in-situ facility and before termination of the license or site.

(7) Processor of Radioactive Material--A manufacturer/distributor who converts normal form radioactive material into special form or a manufacturer/distributor of radioactive sealed sources.

(d) Payment of fees.

(1) Each application for a specific license, general license acknowledgement, or certificate of registration for which a fee is prescribed in subsections (e), (g), (j), or (m) of this section shall be accompanied by a nonrefundable fee equal to the appropriate fee. Each request for evaluation of a sealed source and/or device shall be accompanied by a nonrefundable fee prescribed in subsection (f) of this section. Each application for accreditation of a mammography facility shall be accompanied by a nonrefundable fee prescribed in subsection (h) of this section. Each application for an industrial radiographer certification and an industrial radiographer examination shall be accompanied by a nonrefundable fee prescribed in subsection (i) of this section.

(A) An application for a license covering more than one category of specific license shall be accompanied by the prescribed fee for the highest category and 25% of the applicable prescribed fee for each additional requested category.

(B) An application for a certificate of registration covering more than one category shall be accompanied by the prescribed fee for the highest category.

(C) No application will be accepted for filing or processed prior to payment of the full amount specified.

(2) A nonrefundable fee, in accordance with subsection (e) and (m) of this section shall be paid for each radioactive material license and/or for each general license acknowledgement. The fee shall be for the two-year term of the license or general license acknowledgement. The fee shall be paid in full on or before the last day of the expiration month and year of the license or general license acknowledgement. In the case of a single license that authorizes more than one category of use, the fee shall be the prescribed fee for the highest license category plus 25% of the applicable prescribed fee for each additional license category authorized.

(3) A nonrefundable fee, in accordance with subsection (j) of this section, shall be paid for each certificate of registration for radiation machines and/or services, or sources of laser radiation. The fee shall be for the two-year term of the certificate of registration. The fee shall be paid in full on or before the last day of the expiration month and year of the certificate of registration.

(4) In the case of a single certificate of registration that authorizes more than one category of machine/type of use, the category listed in subsection (j) of this section and assigned the higher fee will be used.

(5) An additional nonrefundable fee equal to five percent of the total fee for each specific license shall be paid with the specified fee by each holder of a specific license, excluding diagnostic nuclear medicine licensees.

(A) The fees collected by the agency in accordance with this paragraph shall be deposited to the credit of the Radiation and Perpetual Care Account, until the fees collectively total $500,000.

(B) If the balance of fees collected in accordance with this paragraph is subsequently reduced to $350,000 or less, the agency shall reinstitute assessment of the fee until the balance reaches $500,000.

(6) Each application for reciprocal recognition of an out-of-state license in accordance with §289.252(s) of this title, an out-of-state registration in accordance with §289.226 of this title, or an out-of-state laser registration in accordance with §289.301 of this title, shall be accompanied by the applicable fee, provided that no such fee has been submitted within 24 months of the date of commencement of the proposed activity.

(7) Each holder of a fixed nuclear facility construction permit or operating license or an operator of any other fixed nuclear facility shall submit an annual fee for services received. This fee shall recover for the State of Texas the actual expenses arising from environmental surveillance and emergency planning and implementation activities. Payment shall be made within 90 days following the date of invoice.

(8) Fee payments shall be in cash or by check or money order made payable to the Department of State Health Services. The payments may be made by personal delivery to the central office, Radiation Control, Department of State Health Services, 1100 West 49th Street, Austin, Texas, or mailed to Radiation Control, Department of State Health Services, 1100 West 49th Street, Austin, Texas, 78756-3189.

(9) Any applicant requesting authorization for any of the categories in subsection (e) of this section for veterinary use will be assessed the fee for the corresponding category.

(e) Schedule of fees for radioactive material licenses. The following schedule contains the fees for radioactive material licenses: Figure: 25 TAC §289.204(e)

(f) Fee for evaluation of a sealed source and/or device.

(1) Each time a manufacturer submits a request for evaluation of a unique sealed source, one of the following fees shall be paid:

(A) for an initial evaluation, a fee of $4,626; or

(B) for an amendment requiring re-evaluation, a fee of $2,309.

(2) Each time a manufacturer submits a request for evaluation of a unique device, one of the following fees shall be paid:

(A) for an initial evaluation, a fee of $9,258; or

(B) for an amendment requiring re-evaluation, a fee of $4,632.

(3) No request for evaluation will be processed prior to payment of the full amount specified.

(g) Fees for certification of mammography systems.

(1) An application for certification of mammography systems shall be accompanied by a fee of $422 for each unit.

(2) The annual fee for mammography systems is $422 for each unit.

(h) Fees for accreditation of mammography facilities.

(1) Each application for accreditation or re-accreditation of a mammography facility shall be accompanied by a nonrefundable fee. No application will be accepted for filing or processed prior to payment of the full amount specified in paragraph (2) of this subsection.

(2) Fees for accreditation of mammography facilities are as follows.

(A) The accreditation fee for the first mammography machine is $880.

(B) The accreditation fee for each additional mammography machine is $490.

(C) The fee for re-evaluation of clinical images due to failure during the accreditation process is $270 per mammography machine.

(D) The fee for re-evaluation of phantom images due to failure during the accreditation process is $210 per machine.

(E) The fee for an additional mammography review will be based on the number of clinical image sets reviewed and the type of review.

(F) The fee for reinstatement of a mammography machine is $610.

(G) The fee for replacement of thermoluminescent dosimeters (TLD) is $70.

(H) Each facility for which a targeted clinical image review is required will be charged for actual expenses to the agency arising from the visit.

(I) Each facility for which an on-site visit due to three denials of accreditation is required will be charged for actual expenses to the agency arising from such visit.

(J) Payment of the fees in subparagraphs (H) and (I) of this paragraph shall be made within 60 days following the date of invoice.

(i) Fees for industrial radiographer certification and for radiographer certification examinations.

(1) The nonrefundable application fee for examination shall be $25 and shall be submitted to the agency with the application for examination.

(2) The nonrefundable application fee for radiographer certification shall be $100 and shall be submitted to the agency with the application for radiographer certification.

(j) Schedule of fees for certificates of registration for radiation machines, lasers, and services. The following schedule contains the fees for certificates of registration for radiation machines, lasers, and services. As of the effective date of this section, the fees for the dental radiographic only category and the veterinary category, as specified in the following schedule, are the applicable fees for those categories.
Figure: 25 TAC §289.204(j)

(k) Annual fees for environmental surveillance and emergency planning and implementation. Fees shall be set annually by the agency for each facility. Fees for fixed nuclear facilities shall be the actual expenses for environmental surveillance and emergency planning and implementation activities. Costs of activities benefiting more than one facility shall be prorated.

(l) Failure to pay prescribed fees.

(1) In any case where the agency finds that an applicant for a license or certificate of registration has failed to pay the fee prescribed in this section, the agency will not process that application until such fee is paid.

(2) In any case where the agency finds that a licensee or registrant has failed to pay a fee prescribed by this section by the due date, the license or certificate of registration expires and the agency may implement compliance procedures as provided in §289.205 of this title (relating to Hearing and Enforcement Procedures).

(3) In any case where the agency finds that a fixed nuclear facility has failed to pay fees for environmental surveillance or emergency planning and implementation within 90 days following date of invoice, the agency may issue an order to show cause why those services should not be terminated.

(m) Schedule of fees for uranium recovery and byproduct material disposal facility licenses. The following schedule contains the fees for uranium recovery and byproduct material disposal facility licenses:
Figure: 25 TAC §289.204(m)

(n) Adjustments to fees for uranium recovery and byproduct material disposal facility licenses.

(1) If additional noncontiguous uranium recovery facility sites are authorized under the same license, the appropriate fee shall be increased by 25% for each additional site for an operational year and 50% for closure only.

(2) If an authorization for disposal of byproduct material is added to a license, the appropriate fee shall be increased by 25%.

(o) One-time fee adjustments for uranium recovery and byproduct material disposal facility licenses. For the addition of the following items after an environmental assessment has been completed on a facility, a one-time fee corresponding to the item shall be paid:

(1) $28,658 for in situ wellfield on noncontiguous property;

(2) $71,651 for in situ satellite;

(3) $11,235 for wellfield on contiguous property;

(4) $50,756 for non-vacuum dryer; or

(5) $71,651 for disposal (including processing, if applicable) of byproduct material.

(p) Fees for Texas Online participation. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2006.

TRD-200600139
Cathy Campbell
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 26. SMALL EMPLOYER HEALTH INSURANCE REGULATIONS

SUBCHAPTER D. HEALTH GROUP COOPERATIVES

28 TAC §§26.401 - 26.405, 26.407 - 26.411

The Commissioner of Insurance adopts amendments to Subchapter D, §§26.401 - 26.405 and 26.407 - 26.411, concerning the establishment of, and provision of health benefit plan coverage to, health group cooperatives pursuant to Insurance Code, Title 8, Chapter 1501. Section 26.409 is adopted with a change to the proposed text published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7686). Sections 26.401 - 26.405, 26.407, 26.408, 26.410 and 26.411 are adopted without changes.

The adopted amendments are necessary to implement SB 805, 79th Legislature, Regular Session, which revised the standards by which insurance companies and health maintenance organizations (HMOs) provide group health benefit plan coverage to health group cooperatives comprised of small or large employers. SB 805 enacted §1501.0575, making participation by health benefit plan issuers in health group cooperatives generally voluntary. The bill also amended §1501.0581 to provide that a health group cooperative may be composed of small employers or large employers, but not both; and that a health group cooperative consisting only of small employers is not required to allow a small employer to join the cooperative under certain statutorily specified conditions and so long as the Commissioner has been timely notified of the cooperative's election. The bill also amended Insurance Code §1501.063 to provide that a health group cooperative is considered a single employer under the Insurance Code, and that a cooperative composed only of small employers that has made the election specified in Insurance Code §1501.0581(o) to restrict membership to no more than 50 employees is to be treated as a small employer for purposes of Chapter 1501, including for purposes of any provision relating to premium rates and the issuance and renewal of coverage. The adopted amendments also are necessary to address changes to requirements governing the formation and operation of health group cooperatives and the obligations of insurance companies and HMOs (hereinafter referred to collectively as "health carriers") that issue health benefit plan coverage for these entities.

The department made one change to the published proposed amendment to §26.409(a) by removing the deletion indicated for §26.409(a)(20), and by changing the Insurance Code reference in paragraph (20) from Article 21.53F to Chapter 1367, Subchapter E. Under §26.409(a)(20), a health benefit plan issued by a health carrier through a cooperative is not subject to the state mandate relating to the offer of coverage for therapies for children with developmental delays as required by Insurance Code 21.53F. The proposed amendment to §26.409(a)(20) as published was intended to make only necessary conforming changes to Insurance Code references based on the enactment of the nonsubstantive code revision by the 78th Legislature, Regular Session. The proposed deletion of subsection (a)(20) was inadvertent, and no substantive change was intended by any of the amendments to §26.409. The repeal of Article 21.53F by HB 2922, 78th Legislature, Regular Session, did not include §9 of that article. Section 9 was enacted in HB 2292, 78th Legislature, Regular Session, subsequent to the repeal of Article 21.53F, and for that reason was not part of the nonsubstantive code revision of the Insurance Code by the 78th Legislature, Regular Session. However, as part of the conforming codification of the Insurance Code enacted by the 79th Legislature, Regular Session, in HB 2018, §9 of Article 21.53F was repealed and enacted as Insurance Code, Chapter 1367, Subchapter E.

The adopted amendments to §26.401 add subsection (e), which requires that organizational documents otherwise required to be filed under the section include notification about whether the health group cooperative elects to restrict membership to 50 eligible employees. The adopted amendments also make conforming changes to Insurance Code references based on the enactment of the nonsubstantive code revision by the 78th Legislature, Regular Session.

The adopted amendments to §26.402 change provisions addressing authorized membership of a health group cooperative and add a new subsection (d) to conform the section to Insurance Code §1501.0581(a) - (c) and (o) - (p), as amended by SB 805. The adopted amendment to §26.403 provides that a health group cooperative may offer other ancillary products and services, in accord with provisions of Insurance Code §1501.058, relating to powers and duties of cooperatives.

The adopted amendments to §26.404 provide that a health group cooperative is considered a large employer for all purposes of Insurance Code, Chapter 1501 and associated rules, unless it has elected to limit participation in the cooperative to 50 eligible employees, in which case it is considered a small employer for all purposes of Insurance Code, Chapter 1501 and associated rules, including guaranteed issuance of coverage.

The adopted amendments to §26.405 make necessary conforming changes to Insurance Code references based on nonsubstantive additions to and corrections in enacted codes pursuant to HB 2018, 79th Legislature, Regular Session. The adopted amendment to §26.407(a) requires a health carrier to make an informational filing with the Commissioner concerning intended offers of coverage to a cooperative not later than 30 days before the initial open enrollment period for the cooperative. The adopted amendment to §26.407(b) revises the specific updated information concerning the health carrier's offer of coverage to the cooperative that the health carrier must provide as part of its §26.407(a) filing with the department.

The adopted amendments to §26.408 provide that, subject to the limitations of §26.411, which regulates health carrier service areas, a health carrier may elect not to offer or issue coverage to health group cooperatives or may elect to offer or issue coverage to one or more health group cooperatives of its choosing. The adopted amendments also clarify that a health carrier must comply with the specified guaranteed issuance requirements in offering and issuing coverage to health group cooperatives that have made the election to limit participation to 50 eligible employees.

The adopted amendments to §26.409 make necessary conforming changes to Insurance Code references, including elimination of references to repealed provisions, based on the enactment of the nonsubstantive code revision by the 78th Legislature, Regular Session.

The adopted amendments to §26.410 make necessary changes to reflect the adopted revision to the section title for §26.407 and also make conforming changes to Insurance Code references based on the enactment of the nonsubstantive code revision by the 78th Legislature, Regular Session.

The adopted amendments to §26.411 make necessary conforming changes to Insurance Code references based on the enact-

ment of the nonsubstantive code revision by the 78th Legislature, Regular Session.

The enactment of SB 805 eliminates the need for §26.412, which addressed the refusal to renew employer health benefit plans delivered or issued to a health group cooperative. SB 805 directs a health carrier to treat a health group cooperative either as a large employer or as a small employer under the refusal-to-renew provisions of Insurance Code §1501.063. For this reason, the department has adopted the repeal of §26.412, which is also published in this issue of the *Texas Register*.

Comment: Two commenters objected to the proposed amendments in §26.404(b) and §26.408(b) that specify certain instances in which a small employer group plan issuer participating in the health group cooperative market would be required to issue coverage to certain cooperatives qualifying as small employers, even if the issuer did not want to select such cooperative for coverage. According to the commenters, the proposed amendments are contrary to the clearly stated intent in Insurance Code §1501.0575 as added by SB 805 that issuer participation in a cooperative or cooperatives is voluntary. The commenters emphasized that the language of the statute as amended clearly provides that a small employer group plan issuer may elect to participate in one or more cooperatives and may select the cooperatives in which it will participate. The commenters suggested revisions to §26.404(b) and §26.408(b) regarding voluntary participation in cooperatives by issuers.

Agency Response: The department agrees that the general provision set out in Insurance Code §1501.0575 as added by SB 805 indicates that issuer participation in a cooperative or cooperatives is voluntary, and that the issuer may elect to participate in one or more cooperatives and may select the cooperatives in which it will participate. However, the specific amendments to Insurance Code §1501.063 that were also enacted in SB 805 clearly provide (i) that a health group cooperative is considered a single employer under the Insurance Code, and (ii) that a cooperative composed only of small employers and that has made the election specified in Insurance Code §1501.0581(o) to restrict membership to no more than 50 employees is to be treated as a small employer for purposes of Chapter 1501, including for purposes of any provision relating to premium rates and the issuance and renewal of coverage. For these reasons, the department makes no changes to subsections §26.404(b) and §26.408(b) as proposed.

Neither for nor against, with recommended changes: Blue Cross Blue Shield of Texas; Texas Association of Life and Health Insurers.

The amendments are adopted under the Insurance Code §§1501.010, 1501.058, 1501.0581, and 36.001, and SECTION 7 of SB 805 as enacted by the 79th Legislature, Regular Session. Section 1501.010 authorizes the Commissioner of Insurance to adopt rules as necessary to implement Chapter 1501. Section 1501.058 requires compliance with federal laws applicable to cooperatives and health benefit plans issued through cooperatives, to the extent required by state law or rules adopted by the Commissioner. Section 1501.0581 requires a health carrier to make an informational filing with the Commissioner concerning intended offers of coverage to a cooperative and requires that the Commissioner by rule prescribe the form and the time of the filing. SECTION 7 of SB 805 directs the Commissioner, not later than January 1, 2006, to adopt rules under §1501.010 as necessary to implement the change in law made by SB 805. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§26.409. Health Benefit Plans Offered Through Health Group Cooperatives.

(a) A health benefit plan issued by a health carrier through a health group cooperative is not subject to the following state mandates:

(1) the offer of in vitro fertilization coverage as required by Insurance Code §§1366.001 and 1366.003;

(2) coverage of HIV, AIDS, or HIV-related illnesses as required by Insurance Code §§1364.001 and 1364.003;

(3) coverage of chemical dependency and stays in a chemical dependency treatment facility as required by Insurance Code Chapter 1368;

(4) coverage or offer of coverage of serious mental illness as required by Insurance Code §§1355.001 - 1355.007;

(5) the offer of mental or emotional illness coverage as required by Insurance Code §1355.106;

(6) coverage of inpatient mental health and stays in a psychiatric day treatment facility as required by Insurance Code §1355.104;

(7) the offer of speech and hearing coverage as required by Insurance Code Chapter 1365;

(8) coverage of mammography screening for the presence of occult breast cancer as required by Insurance Code §1356.005;

(9) standards for proof of Alzheimer's disease as required by Insurance Code §1354.002;

(10) coverage of stays in a crisis stabilization unit and/or residential treatment center for children and adolescents as required by Insurance Code §§1355.055 and 1355.056;

(11) continuation of coverage of certain drugs under a drug formulary as required by Insurance Code §1369.055;

(12) coverage of off-label drugs as required by Insurance Code §§1369.001 - 1369.005;

(13) coverage for formulas necessary for the treatment of phenylketonuria as required by Insurance Code Chapter 1359;

(14) coverage of contraceptive drugs and devices as required by Insurance Code §§1369.101 - 1369.109 and §21.404(3) of this title (relating to Underwriting);

(15) coverage of diagnosis and treatment affecting temporomandibular joint and treatment for a person unable to undergo dental treatment in an office setting or under local anesthesia as required by Insurance Code Chapter 1360;

(16) coverage of bone mass measurement for osteoporosis as required by Insurance Code §1361.003;

(17) coverage of diabetes care as required by Insurance Code Chapter 1358;

(18) coverage of childhood immunizations as required by Insurance Code §§1367.051 - 1367.055 and 1367.053;

(19) coverage for screening tests for hearing loss in children and related diagnostic follow-up care as required by Insurance Code §§1367.101 - 1367.105;

(20) offer of coverage for therapies for children with developmental delays as required by Insurance Code Chapter 1367, Subchapter E;

(21) coverage of certain tests for detection of prostate cancer as required by Insurance Code Chapter 1362;

(22) coverage of acquired brain injury treatment/services as required by Insurance Code Chapter 1352;

(23) coverage of certain tests for detection of colorectal cancer as required by Insurance Code Chapter 1363;

(24) coverage for reconstructive surgery for craniofacial abnormalities in a child as required by Insurance Code §§1367.151 - 1367.154;

(25) coverage of rehabilitation therapies as required by Insurance Code §1271.156;

(26) limitations on the treatment of complications in pregnancy established by §21.405 of this title (relating to Policy Terms and Conditions);

(27) coverage for services related to immunizations and vaccinations under managed care plans as required by Insurance Code Chapter 1353;

(28) limitations or restrictions on copayments and deductibles imposed by §11.506(2)(A) and (B) of this title (relating to Mandatory Contractual Provisions: Group, Individual and Conversion Agreement and Group Certificate);

(29) coverage of a minimum stay for maternity as required by Insurance Code §§1366.051 - 1366.059;

(30) coverage of reconstructive surgery incident to mastectomy as required by Insurance Code §§1357.001 - 1357.007; and

(31) coverage of a minimum stay for mastectomy treatment/services as required by Insurance Code §§1357.051 - 1357.057.

(b) A health benefit plan issued by an HMO through a health group cooperative must provide for the basic health care services as provided in §11.508 or §11.509 of this title (relating to Mandatory Benefit Standards: Group, Individual and Conversion Agreements and Additional Mandatory Benefit Standards, Group Agreement Only):

(c) A health benefit plan offered by an insurer through a health group cooperative is not subject to §3.3704(a)(6) of this title (relating to Freedom of Choice: Availability of Preferred Providers).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 11, 2006.

TRD-200600176
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: January 31, 2006
Proposal publication date: November 18, 2005
For further information, please call: (512) 463-6327

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28 TAC §26.412

The Commissioner of Insurance adopts the repeal of §26.412, concerning the refusal of a health carrier to renew employer health benefit plans delivered or issued to a health group cooperative. The repeal of this section is adopted without changes to the proposal published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7690).

Section 26.412 regulated a health carrier's election to refuse to renew employer health benefit plans delivered or issued to a health group cooperative. Repeal of §26.412 is necessary because the enactment of SB 805, 79th Legislature, Regular Session, obviates the need for the section. Under SB 805, health carriers issuing employer health benefit plans to health group cooperatives are to treat such cooperatives as either large employers or small employers pursuant to the refusal-to-renew provisions of Insurance Code §1501.063.

The adoption of the repeal will result in consistency between the Chapter 26 administrative rules regulating health care cooperatives with regard to refusal-to-renew provisions and the amendments to Insurance Code Chapter 1501 enacted in SB 805.

The department did not receive any comments on the proposed repeal.

The repeal is adopted pursuant to the Insurance Code §§1501.010, 1501.058, 1501.0581, and 36.001, and SECTION 7 of SB 805 as enacted by the 79th Legislature, Regular Session. Section 1501.010 authorizes the Commissioner of Insurance to adopt rules as necessary to implement Chapter 1501. Section 1501.058 requires compliance with federal laws applicable to cooperatives and health benefit plans issued through cooperatives, to the extent required by state law or rules adopted by the Commissioner. Section 1501.0581 requires a carrier to make an informational filing with the Commissioner concerning intended offers of coverage to a cooperative and requires that the Commissioner by rule prescribe the form and the time of the filing. SECTION 7 of SB 805 directs the Commissioner, not later than January 1, 2006, to adopt rules under §1501.010 as necessary to implement the change in law made by SB 805. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 11, 2006.

TRD-200600175
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§116.12, 116.150, 116.151, 116.160, and 116.610; the repeal of §§116.180 - 116.183, 116.410, and 116.617; and new §§116.121, 116.180, 116.182, 116.184, 116.186, 116.188, 116.190, 116.192, 116.194, 116.196, 116.198, 116.400, 116.402, 116.404, 116.406, 116.617, and 116.1200. Sections 116.12, 116.121, 116.150, 116.151, 116.160, 116.180, 116.182, 116.186, 116.188, 116.190, 116.192, 116.194, 116.196, 116.198, 116.400, 116.610, and 116.617 are adopted *with changes* to the proposed text as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6183). Sections 116.184, 116.402, 116.404, 116.406, and 116.1200 and the repealed §§116.180 - 116.183, 116.410, and 116.617 are adopted *without changes* to the proposed text as published and the text will not be republished. The amended, repealed, and new sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

EPA adopted revisions to 40 Code of Federal Regulations (CFR) §§52.21, 51.165, and 51.166 in the December 31, 2002, publication of the *Federal Register* (67 FR 251), which amended the application of federal new source review (NSR) in air quality permitting. Federal NSR is triggered by a new major source or major modification. If the area in which the source will be located is also classified as nonattainment for a pollutant that will be emitted by the source, the source must offset the emission increase with emission decreases at other facilities or through the purchase and retirement of emission reduction credits. The source would also have to apply control technology that meets the lowest achievable emission rate to the new and modified units.

Federal NSR reform is intended to limit the instances where federal NSR will be required of facilities that undergo modifications. It will streamline plant modifications by allowing small changes to be completed without the delay associated with federal NSR. Currently, most modifications are evaluated to determine the applicability of federal NSR through a netting exercise. Netting is an accounting exercise where, prior to the modification of a facility, the sum of emission increases and decreases over a specified period of time at the plant site is determined. If the total exceeds the major modification threshold, the modification is subject to federal NSR. NSR reform provides an additional path that may be taken to avoid federal NSR applicability (plant-wide applicability limit (PAL)) as well as methods to minimize the emission increase determined in the netting exercise (baseline and actual-to-projected actual emission rates).

The commission's proposal on NSR reform was intended to integrate the federal revisions within an existing state program that addressed similar situations concerning plant-wide emission limits and baseline emission determinations. The commission also solicited comments from affected industries on the relative benefits of an integrated program versus an incorporation of the federal program without substantive changes. It is clear from stakeholder meetings and public comment that a program matching the federal rules is the preferred method of accomplishing federal NSR reform. The commission agrees that it has traditionally approached state NSR permitting separately from federal NSR requirements. Additionally, the commission can continue this approach under federal NSR reform without endangering the attainment of maintenance of national ambient air quality standards (NAAQS) or affecting public health. The commission is adopting rules implementing the federal program on PALs, actual-to-projected actual emissions test, and baseline determination without substantive changes to the federal model for these programs.

The commission currently allows the inclusion of certain maintenance, startup, and shutdown (MSS) emissions in NSR permits. The commission expects to consider rules to prescribe authorization mechanisms and procedures for emissions not historically authorized, including those for MSS activities. The commission will also consider the authorization of emissions that any well maintained, operated, and managed facility cannot eliminate entirely. These emissions are therefore anticipated and quantifiable, yet unscheduled (QUAN). Examples are emissions that may be released intermittently from a pressure relief valve, line switching, compressor blow-downs, or even a burst seal well before the end of its life expectancy. QUAN emissions are arguably different in nature from the most commonly reported emissions events, those incidents resulting from inadequate maintenance, malfunctions, accidents, and disasters, and therefore should be taken out of the classification of "emission event" by providing an authorization mechanism. These actions will enable the commission to authorize MSS and QUAN emissions for inclusion in baseline emissions applicable to the NSR reform program.

The commission is also adopting a new version of the state pollution control project standard permit that includes required federal changes emissions netting. The new standard permit also includes authorization requirements for MSS and is reorganized.

Plant-wide Applicability Limit

The adopted version of the site-wide PAL closely follows the federal model and is established for each pollutant using the baseline emission rate for each facility. A control technology evaluation is required only if a cap increase is sought. The PAL can be reduced at renewal if emissions are less than 80% of the cap. The PAL baseline emissions will include authorized MSS and QUAN.

Baseline

The emission increase associated with a modification is determined by taking the difference, in tons per year, between the proposed emission rate and the actual annual emissions (or baseline emissions) during the baseline period. The baseline period can be any consecutive 24-month period in the previous ten years (typically that period where the emissions from the facility to be modified are the greatest). The baseline period is a 24-month period in the previous five years for electric utility steam generating units.

Actual-to-Projected Actual Emissions Test

Federal NSR reform allows use of a projected actual emission rate to be used to determine a project emission increase with compliance tracked for five to ten years. Additionally, any calculated emission increase can be reduced by the emissions that could have been accommodated in the baseline period.

Federal NSR reform included two other components, the clean unit designations and pollution control projects. As a result of a petition for review of EPA's final action, on June 24, 2005, the District of Columbia Circuit Court of Appeals in *State of New York, et al v. U.S. Environmental Protection Agency*, No. 413 F.3d 3 (D.C. Cir 2005), vacated the clean unit and pollution control project provisions of the rule and remanded recordkeeping provisions to the EPA. As a result of this court decision, the commission has not adopted rules concerning clean unit and federal pollution control projects. The commission is adopting the standard permit for state pollution control projects. The standard permit for state pollution control projects allows projects that will have better or equivalent controls, but increases and decreases for projects qualifying for the standard permit for state pollution control projects requires evaluation for federal permitting applicability, which may include netting calculations. This new requirement for the state pollution control projects is also a result of the June 24, 2005, ruling, which does not allow a federal NSR exemption for incidental emission increases resulting from pollution control projects. In addition, the standard permit for state pollution control projects may be used to authorize emissions reductions and collateral increases for facilities authorized under a permit by rule as long as any collateral increases do not cause emission rates to exceed limits found in 30 TAC §106.4(a), Requirements for Permitting by Rule, or other standard permits as long as any collateral increases do not exceed the limits of §116.610, Applicability.

SECTION BY SECTION DISCUSSION

The commission adopted administrative changes throughout this rulemaking to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

§116.12. Federal Permit Definitions.

The commission amended the title of §116.12 to reflect the addition of all definitions associated with federal NSR or prevention of significant deterioration (PSD) permit applicability analysis. In addition to the changes necessary to incorporate NSR reform into the nonattainment permit program, the commission has adopted changes associated with including PSD applicability analysis. These definitions now apply to the revised sections of the PSD rules in Chapter 116, Subchapter B, Division 6, Prevention of Significant Deterioration Review, as well as the new sections associated with PAL permits.

The definition of actual emissions, in paragraph (1), has been amended to exclude this definition from being used in the federal NSR applicability test. In response to public comments, the commission specified that actual emissions are determined over a 24-month period instead of two years. When determining whether the emission increase associated with a project is significant, the baseline actual emissions, defined in new paragraph (3), must be used. Paragraph (3)(A) allows electric utility steam generating units to identify baseline actual emissions as the rate, in tons per year, at which an existing unit emitted the pollutant during any consecutive 24-month period within the five-year period immediately preceding construction. A different time period may be selected if it is shown to be more representative of normal source operations. This is consistent with past guidance provided by EPA for these sources. In response to public comment, the commission deleted the word "average" as a modifier for "emissions" and changed "reviewing authority" references to "executive director." The commission made this change to refer to "executive director" through the definitions added to §116.12 for the implementation of NSR reform.

Paragraph (3)(B) allows other source types to choose 24 consecutive months in the ten years preceding start of construction to establish their baseline emissions. In this case, the source must adjust this emission rate down for any emission limitations that would currently apply to the facility. These limitations include requirements in the SIP, federal rules (with the exception of 40 CFR Part 63), or permit requirements that would apply when the analysis is completed.

Paragraph (3)(C) identifies baseline emissions for new facilities as being zero and also defines baseline emissions for new facilities that have operated for less than two years to be the facility's potential to emit. Paragraph (3)(D) requires that a project affecting all facilities use the same 24-month baseline period for each pollutant. For example, if a project affected five facilities that emitted volatile organic compounds and particulate matter, all five would have to identify the same baseline period for volatile organic compounds; however, a different 24-month period could be chosen for particulate matter. The source must have sufficient records to document the baseline emissions, which cannot have occurred before November 15, 1990.

Paragraph (3)(D) also requires that baseline emission rates be adjusted down to exclude noncompliant emissions. The EPA's reform rule requires that baseline emissions include startup, shutdown, and malfunction emissions. The commission's policy, which has evolved over a number of years, currently allows for permitting of emissions from certain MSS activities. Changes to this policy are being evaluated. The commission has been unsuccessful in getting clarification on the EPA's basis for inclusion of malfunction emissions in the baseline calculation. Given these circumstances, paragraph (3)(E) has been added to allow for the inclusion of those emissions that could currently be authorized to be included in the baseline. The commission deleted the phrase "in a permit action under Chapter 106 of this title (relating to Permits by Rule) and this chapter" because these are types of authorizations and the phrase is redundant. Given that sources would become aware of this change with adoption of this rule amendment, the effort involved in authorizing these types of emissions, and the baseline period having to be within ten years of the project, this method of determining baseline emissions would be available for some time but not beyond ten years from the effective date of this rule amendment. After that date, all baseline emissions will have to have been authorized. Paragraph (3)(D) also requires that fugitive emissions be included in the baseline to the extent they can be quantified.

In response to public comment to adopt a version of NSR reform closer to the federal model and to be consistent with the use of federal terms, the commission had added definitions for "Basic design parameters," "Major facility," "Replacement facility," "Significant facility," and "Small facility." The term "facility" has been substituted for the federal term "emissions unit" in the appropriate definitions. The term "facility" is an established part of the commission's permitting program and is synonymous with "emissions unit." The remaining paragraphs have been renumbered as a result of the added definitions.

Paragraphs (7) and (8), associated with the federal definition of clean coal, have been added as a result of including PSD applicability into the definitions under this section. The definition of *de minimis* threshold test in paragraph (12) has been revised to reference significant levels, including those for PSD as well as nonattainment. In response to public comment, the commission

substituted the term "significant level" for "major modification" in Table 1 in the definition of "Major modification" in §116.12.

The federal definition of electric utility steam generating unit is provided in new paragraph (13). The definition identifies those units that are subject to a different baseline emissions determination than other source types. New paragraph (14) defines federally regulated NSR pollutant, providing a comprehensive list of pollutants that may be subject to federal NSR.

The definition for major stationary source has been renumbered as paragraph (17) and has been modified to remove references to facility for clarity, as well as to include PSD review within the definition. 40 CFR §51.166(b)(1) is referenced to identify the PSD major source thresholds. The "source" identified in this definition is the EPA NSR source that is, in most cases, analogous to "account" as defined in 30 TAC §101.1, General Air Quality Definitions.

A number of changes are adopted for the definition of major modification in renumbered paragraph (18). The commission added language to incorporate PSD review into the definition and references to facility have been removed for clarity. Language has been added to clearly identify the two criteria, a significant project emission increase and a significant net emission increase, that must be met for a modification to be considered major at a major source. In response to public comment concerning the adoption of a PAL program closer to the federal model, the commission substituted the term "significant level" for "major modification" in Table 1, and deleted the proposed expansion of the definition to identify projects performed at facilities within a PAL as being major modifications if the modifications result in emission increases at facilities outside the PAL that are significant.

The commission adopted changes to the definition of net emission increase in renumbered paragraph (20) specifying that baseline actual emissions are to be used to determine emission increases and decreases, adjusting the language to accommodate for PSD applicability, and excluding emission increases at facilities under a PAL from being creditable. Under the amendment, emission decreases cannot be counted in both an attainment demonstration and credit for nonattainment netting because this would be double credit for the same reduction. Emission decreases need only be enforceable rather than federally enforceable. The commission deleted the phrase "enforceable as a practical matter" and will just use "enforceable." The commission also substituted the term "project emissions increase" for "total increase in actual emissions from a particular physical change. . ." because this concept is included within the definition of "Project emissions increase." In response to public comment the commission deleted the proposed revision that stated that emission decrease cannot have been relied upon in the issuance of a PAL. The commission made the same deletion in the definition of "Offset ratio" in paragraph (21).

The commission adopted new paragraphs (22) - (26) to incorporate definitions from NSR reform related to PALs into the commission rules. These new paragraphs include definitions for: PAL; PAL effective date; PAL major modification; PAL permit; and PAL pollutant. In response to public comment, the commission modified the proposed definition of PAL pollutant to restrict its application to major sources. The commission deleted the phrase "enforceable as a practical matter" and will just use "enforceable."

The requirement to use baseline actual emissions has been added to renumbered paragraph (28), in the definition of "Project net." The commission also substituted the term "project emissions increase" for "total increase in actual emissions from a particular physical change. . ." because this concept is included within the definition of "Project emissions increase."

The commission adopted new paragraphs (29) and (30) to define the new concepts of projected actual emissions and projects emissions increase. The project emissions increase may be determined in a different manner than the other emission increases that might be part of a netting exercise (used to determine the net emissions increase). For existing facilities, the emission increase at modified or affected facilities may be determined by using the projected actual emissions rate rather than the potential to emit for the facility. The projected emission rate must be developed using all relevant information including company projections and filings with regulatory authorities. The basis for the projection must be maintained by the source and would be submitted with any documentation required for a state NSR authorization to demonstrate that the project is not subject to federal review. The source would be required to demonstrate compliance with the projected emission rates for ten years if there was a change to the source's potential to emit or increase in capacity. Other affected facilities would be required to demonstrate compliance with projected rates for five years.

The actual-to-projected actual emissions rate test also allows the source to remove from the project increase any emissions increase that could have been accommodated in the baseline period. These must be unrelated to the project and may include demand growth. This federal rule change extends this concept that was developed for the electrical generation industry where traditionally there had been a captured, or limited, customer base that was expected to grow at some rate unrelated to the available capacity of the generator. While this concept appears reasonable for the electric power industry as well as some sources with a limited customer base due to geography (such as gasoline terminals), it is not as useful for industries that have national or international markets served by multiple sources. In these cases, a demonstration is required that the market conditions expected in the future would be significantly different than any time in the past ten years and that if they had occurred in the baseline, they would have resulted in different operations. It is likely that this case would only be made in cases such as a prolonged outage at a major producer or a significant shift in market conditions. The determination of what could have been accommodated is limited to what could have been produced or handled and does not allow for changes in emissions that could have occurred due to a lower emission control device efficiency or the use of a fuel or solvent that might have resulted in greater emissions.

The commission adopted a definition for "Temporary clean coal technology demonstration project" as new paragraph (36) to fully incorporate all of EPA's exclusions to what is considered a major modification under NSR reform.

§116.121. Actual-to-Projected Actual and Emissions Exclusion Test for Emissions Increases.

The commission adopts this new section to require documentation associated with the projected actual emissions rates and records of compliance as identified in the federal rule. New subsection (a) requires a demonstration that federal NSR does not apply be submitted with any permit application or registration. This demonstration must be documented by records that include a project description, the facilities affected, and a description of the applicability test. New subsection (b) requires monitoring of emissions that could increase as a result of the project if pro-

jected actual emissions are used to determine the project emission increase at a facility.

New subsection (c) requires electric utility steam generating units to provide the executive director documentation of emissions for each calendar year that records are required under the actual-to-projected actual test. New subsection (d) requires facilities, other than electric generating units, to submit a report to the executive director if annual emissions exceed the baseline actual emissions by a significant amount. Any other information that the owner or operator wishes to include in the report, such as an explanation as to why the emissions differ from the preconstruction projection, may be included as well. New subsection (e) establishes record retention periods and was modified in response to public comment to allow review by local pollution control programs and the general public of all documentation required under this section.

The commission expects that projected actual emissions will be used extensively in registrations or claims for non-PSD and nonattainment NSR authorizations where a maximum allowable emission rate is not specified in the rule. The use of a projected actual emissions rate for a modified source in these NSR construction permits is expected to be limited because the allowable emission rate would not generally be based on an activity level that would not be reached for more than ten years. The commission is adopting changes in subsections (a), (c), (d), and (e) to make language more concise and to specify the use of a calendar year for the submission of reports.

§116.150. New Major Source of Major Modification in Ozone Nonattainment Areas.

The commission deleted the date (June 15, 2004) in subsection (a), which would apply major modification determination based on the date an application is determined administratively complete. In response to EPA comment, this determination will be made based on the issuance date of the permit. The commission is adopting subsection (a)(1) and (2) that specifies when the requirements of this section will apply to facilities. The section will apply on the effective date of the permit for facilities located in areas that are designated ozone nonattainment on the effective date of this section. For those areas that are designated nonattainment after this section is effective, the section will apply based on the date a permit application is administratively complete.

The amendment to subsection (b) deleted language referring to a modified facility that will be a new major stationary source, which has caused confusion about what constitutes a major modification at an emission source that becomes major after the modification. A minor modification to a minor source that results in a major source does not qualify the modification as major. The commission refers to the definitions of major stationary source and major modification in §116.12 to make this determination. The commission also substituted the term "facility" for "emission unit" in subsection (e)(1) for consistency in use of terms. The amendment to this section added a reference to "significant level" consistent with changes in §116.12 and updated that section's title to Nonattainment and Prevention of Significant Deterioration Review Definitions. In response to public comment, the commission also amended subsections (c)(3) and (d)(2) to indicate that project emission increases must be less than the significant level before and after netting.

In response to public comment, the commission deleted the phrase "aggregated over the contemporaneous period" from subsection (e). This term "contemporaneous period" is included in the definition of "*De minimis* threshold test (netting)" and was redundant.

§116.151. New Major Source or Major Modification in Nonattainment Area Other Than Ozone.

The commission adopted amendments to this section consisting primarily of administrative and formatting changes. The reference to November 15, 1992, has been deleted from subsection (a) because that date is not applicable for application of the section. The commission substituted the term "facility" for "emission unit" in subsection (c)(1) for consistency in use of terms. Subsections (b) and (c) state when netting is required, and subsection (c) was amended to delete the reference to "contemporaneous period" because this term is included in the definition of "*De minimis* threshold test (netting)."

§116.160. Prevention of Significant Deterioration Requirements.

The amendment to this section limits the incorporation by reference of definitions from 40 CFR §52.21 that are used to administer the PSD program, deleting most of the language in subsection (a) and all of the language in existing subsections (b) - (d).

and all of the language in existing subsections (b) - (d).

Amended subsection (a) deleted the federal rule references and replaced them with language that requires a proposed new major source or major modification in an attainment or unclassifiable area to meet the requirements of this section.

The new subsection (b) states that the *de minimis* threshold test (netting) is required for all modifications to existing major sources of federally regulated NSR pollutants, unless the proposed emissions increases associated with a project, without regard to decreases, are less than major modification thresholds for the pollutant.

New subsection (c) incorporated by reference the following definitions and requirements located in 40 CFR §52.21: baseline concentrations, baseline dates, baseline areas, innovative control technology, federal land manager, terrain, Indian reservations/governing bodies, increments, ambient air ceilings, restrictions on area classifications, exclusions from increment consumption, redesignation, stack heights, exemptions, source impact analysis, air quality analysis, source information, additional impact analysis, sources impacting federal Class I areas, and innovative technology. Other definitions used for the PSD program or visibility in Class I areas program are currently in the commission's rules. The term "aggregated over the contemporaneous period" was deleted from subsection (c) because the term is included within the term "*De minimis* threshold test (netting)." The amendment also substituted the term "facility" for "emissions unit" in the definitions incorporated from the CFR because the commission's permitting actions are based on the individual facility or groups of facilities as defined in the commission's rules. The term "executive director" also replaces "administrator" in portions of 40 CFR §52.21(g) and (v). In response to public comment, the requirement to issue a PSD permit within a year of receipt of a completed application has been deleted from subsection (c)(4).

Existing subsection (d) has been re-designated as subsection (e).

In addition to renaming Subchapter C, the commission also adopted a new Division 1, Plant-wide Applicability Limits.

§116.180. Applicability.

This adopted section limits a PAL to one pollutant as required by the EPA and a site to one PAL permit in subsection (a). The commission is deleting the reference to state or federal permit and will use the term "NSR permit." A PAL permit may contain separate PALs for several pollutants and will likely be consolidated with an NSR construction or flexible permit at the site. Subsections (b) and (c) identify the administrative procedure for changes in ownership, as well as responsibility for the PAL permit application. The commission is changing the phrase "new owners of facilities, group of facilities, or account" to "new owner of a major stationary source" as a more inclusive term.

§116.182. Plant-wide Applicability Limit Permit Application.

This new section identifies the information necessary for a PAL permit application. Paragraph (1) requires the facilities that would be included in the PAL to be identified with their design capacities and potential to emit and NSR authorizations. Paragraph (2) requires that the baseline emissions for those facilities be identified so that they may be used to set the PAL. Paragraphs (3) and (5) require the applicant to identify how plans to monitor and use that information will be used to demonstrate compliance with the PAL. This information will serve as a starting point to develop PAL permit conditions.

The commission did not adopt the proposed new paragraphs (4) and (6) requiring that best available control technology (BACT), on average, be implemented on all existing facilities to be included in the PAL over a period of time (typically less than five years). This is consistent with the commission's decision to implement NSR reform in a form closer to the federal model. Paragraph (6) would have required an implementation schedule for BACT if control technology required upgrading.

§116.184. Application Review Schedule.

This new section requires that PAL applications be reviewed on a schedule similar to other air permits as provided for in §116.114, Application Review Schedule.

§116.186. General and Special Conditions.

This new section identifies the PAL as an annual emission rate for a federally regulated NSR pollutant covering all facilities identified in the application in subsection (a). Emissions from all facilities must be determined and compliance with the PAL must be documented monthly. The commission is deleting the unnecessary phrase "enforceable as a practical matter" and will just use "enforceable." The commission is also substituting the word "demonstrate" for "show."

Subsection (b) identifies the general conditions applicable to every PAL. Paragraph (1) emphasizes that the PAL is not an authorization to construct but only sets an emission rate, below which federal NSR is not required. Paragraphs (2) and (3) identify sampling procedures and how a permit holder might obtain approval for an equivalent method. These requirements ensure consistency between various types of the commission's air permits. The commission has substituted the word "are" for "will be" to more accurately indicate the applicability of the section.

Subsection (b)(4) integrates common recordkeeping and reporting requirements for most other air permits with the much more extensive requirements identified in the EPA rule. Paragraph (4)(A) and (B) require that the PAL permit application and records associated with demonstrating cap compliance be maintained on site. Subsection (b)(4) includes the reporting requirements from the EPA rule. Consistent with its decision to adopt a PAL program equivalent with the federal model, the commission determined that the semiannual and deviation reporting requirements proposed in subsection (b)(4) were not sufficiently consistent with the federal rule requirements and added subsection (b)(4)(C) and (D) to incorporate federal requirements. Proposed subsection (b)(5) was not adopted for consistency with the federal rules.

Renumbered paragraphs (5) and (6) contain language common to air permits identifying what facilities are covered by the PAL, and requiring proper operation of control equipment and compliance with all rules. The PAL life of ten years is identified in paragraph (7). Paragraphs (8) and (9) incorporate requirements from the EPA rule requiring facility emissions to be reported as the potential to emit if monitoring data is not available, and that all data used to establish the PAL be revalidated at least every five years. The commission also added subsection (b)(10) allowing the extension of a PAL while an application for renewal is being considered.

Subsection (c) identifies those EPA requirements that must be incorporated into the permit through special conditions. All facilities in a PAL must be monitored using one of the following four methods: mass balance; continuous emission monitoring system, continuous parameter monitoring system, or predictive emission monitoring system; or emission factors. An alternate approach may be approved by the executive director. Performance standards for each type of monitoring are specified. The special conditions will also require a BACT implementation schedule, if applicable. For consistency with the federal rule, the commission deleted subsection (c)(4), which had required an implementation schedule for BACT.

§116.188. Plant-wide Applicability Limit.

This new section identifies how the PAL is to be determined. The commission is substituting "is " for "will be established as" in the opening paragraph to more clearly define a PAL. In response to public comment, the commission added a specification requiring reduction of the PAL baseline emissions resulting from permanent shutdown of facilities. Paragraph (1) allows the inclusion of emissions, up to the significance level, in addition to baseline emissions. For consistency with the federal rule, the commission did not adopt the provision requiring addition of the significance level to project emission increases. Paragraph (2) limits all facilities to the same baseline period for a given pollutant. For consistency with the federal rule, proposed paragraph (3) that addressed determination of the PAL if there is a major modification involved was not adopted. Paragraph (4), renumbered as paragraph (3), requires that the PAL be reduced for any effective rules that have a future compliance date.

§116.190. Federal Nonattainment and Prevention of Significant Deterioration Review.

This new section identifies that any changes that occur under a PAL are not considered federal modifications unless the PAL will be exceeded. Subsection (b) restricts the generation of offsets from facilities under a PAL to cases where the PAL is lowered and such a decrease would be creditable without the PAL. For consistency with the federal rule, the commission added subsection (c), which states that a physical or operational change not causing an exceedence of a PAL is not subject to federal NSR review.

§116.192. Amendments and Alterations.

Consistent with its decision to adopt a PAL equivalent to the federal model, the commission made extensive revisions to

§116.192, which include the requirements for reopening a PAL permit and increasing a PAL.

The commission retained the requirement that would allow increases to a PAL only through amendment in subsection (a). The commission deleted the requirement that the new or modified facilities causing the need for the PAL increase be reviewed under the appropriate federal NSR program. The amended PAL remains subject to public notice, and the PAL increases are effective when the new and modified units become operational. The commission added subsection (a)(1), which would require the considered application of BACT or equivalent technology where a facility proposes to add or modify units in such a way as to equal or cause an exceedance of the PAL. Such an increase would be authorized only if the source would not be able to maintain emissions below the PAL assuming application of BACT or BACT-equivalent controls. The commission added subsection (a)(2), which requires federal NSR permits for all facilities that equal or exceed a PAL. The new PAL would be the sum of the allowable emissions for each new or modified source after the application of BACT. Subsection (a)(3) requires any new PAL to be effective on the day any new unit that is part of the PAL begins operation. Subsection (a)(4) states that the PAL shall be the sum of the allowable emissions for each modified or new facility, plus the sum of the baseline actual emissions of the significant and major emissions units after the application of BACT-equivalent controls as identified in subsection (a)(1) of this section, plus the sum of the baseline actual emissions of the small emissions units.

The commission did not adopt proposed subsection (b), which limited reconsideration of controls associated with a PAL to amendments, but allows for changes in the implementation schedule to be requested through alteration. The commission adopted a new subsection (b), which identifies other changes that may be completed by alteration. These include changes to the special conditions that do not increase the emission cap.

§116.194. Public Notice and Comment.

The commission adopted a revised version of this section to require notification of intent to issue a permit allowing for public comment and an executive director response. These public notice requirements are similar to what the commission currently uses for permitting grandfathered facilities, and the commission has determined that they are equivalent to federal notice requirements for PALs. The public notice requirements for the issuance of a PAL permit does not exempt applicants for an NSR permit from meeting the requirements of Chapter 116, Subchapter B.

§116.196. Renewal of a Plant-wide Applicability Limit Permit.

This new section requires that a PAL renewal application be submitted within six to 18 months of the PAL expiration date in subsection (a). Submittal within that time period ensures that the PAL will not expire. Subsection (b) makes all PALs issued with flexible permits under past guidance subject to renewal under this proposed rule. Any PAL that has been in place for more than ten years must be submitted for renewal by December 31, 2006, or within the time specified, whichever is later.

Subsection (c) identifies the information necessary for a renewal application. This information includes the proposed PAL level and any other information that the executive director may require to determine at what level to renew the PAL. For consistency with the federal rule, the commission did not adopt provisions that would have required identification of and justification for those qualified facilities to be included in the PAL and the potential to emit for qualified facilities and highest consecutive 12-month emissions in the last ten years for those that are not qualified.

Subsection (d) would require public notice for the renewed PAL. For consistency with the federal rule, the commission did not adopt the proposed language of subsection (e) that would have required the summation of the potential to emit for qualified facilities and the greatest rolling 12-month emissions for the facilities that are not qualified. The commission adopted revised language in subsection (e) allowing adjustment to a PAL if emission levels are greater than or equal to 80% of the PAL and if the executive director determines that a new PAL is more representative considering technology, economic factors, or the facility's prior voluntary reductions.

To be consistent with the federal rule, the commission adopted a new subsection (f) allowing for adjustment of a PAL affected by new state or federal requirements during the PAL effective period at the time of PAL or federal operating permit renewal, whichever occurs first.

§116.198. Expiration or Voidance.

To be consistent with the federal rule, the commission adopted language in this section significantly different than language that was proposed. The commission did not adopt the requirement for technology upgrades prior to PAL expiration or voidance. The adopted language in subsection (a) specifies the ten-year term of PAL permits. Subsection (b) addresses PALs that will not be renewed and allows owners of PAL sites to propose allowable emissions for each facility that was covered under the PAL. The executive director will decide on the allowable emissions distribution and issue revised permits.

§116.400. Applicability; §116.402. Exclusions; §116.404. Application; and §116.406. Public Notice Requirements.

These new sections contain identical language to that found in the current §§116.180 - 116.183. These sections apply to the regulation of sources of hazardous air pollutants. The new sections are adopted as a reorganization of this chapter in order to accommodate new sections concerning NSR reform and do not contain any substantive changes. The commission adopted administrative changes to be consistent with previously mentioned guidelines and to remove dates that are no longer applicable.

The commission adopts the repeal of §116.410, Applicability.

§116.610. Applicability.

The adopted amendment to this section removes references in subsection (a)(1) to specific paragraphs within 30 TAC §106.261 because the paragraph numbering of §106.261 has changed. The reference to §106.262 is deleted because §106.261 refers to the use of §106.262, when applicable. The adopted change to subsection (b) deletes the exemption from NSR requirements for projects authorized under proposed new §116.617. As discussed earlier, this change is based on the June 24, 2005, decision that vacated EPA rules exempting incidental emission increases from NSR. In response to public comment, the commission adopted language referring to §116.12 for definitions of "major stationary source" and "major modification."

The commission adopted the repeal of §116.617, Standard Permits for Pollution Control Projects.

§116.617. State Pollution Control Project Standard Permit.

This adopted new section incorporates existing requirements listed throughout the current rule, while clarifying the language

in new subsection (a). Subsection (a) is organized into paragraphs (1) - (4) , which include scope and applicability conditions currently found in existing §116.617. Proposed new subsection (a)(1) lists the three types of existing authorizations that may be modified by a state pollution control project standard permit. New subsection (a)(2) clarifies the types of projects that may be authorized by a state pollution control project standard permit, reorganized from the existing §116.617 requirements.

New subsection (a)(3) outlines the prohibitions for use of the state pollution control projects standard permit, clarifying the existing intent and requirements of current §116.617. Specifically, subsection (a)(3) does not allow production facilities to be replaced or modified in any way under this authorization since these types of changes need to be reviewed for BACT and potential harmful effects to health and property in accordance with Texas Health and Safety Code (THSC), Chapter 382, the Texas Clean Air Act (TCAA), §382.0518 and §116.610, unless the conditions of a standard permit or permit by rule are met. Subsection (a)(3)(A) states that the standard permit will not be used to authorize complete replacement of an existing facility or reconstruction of a production facility.

New subsection (a)(3)(B) states that any collateral emission increase associated with the state pollution control project standard permit must not cause or contribute to any exceedance of an NAAQS or cause adverse health effects. The commission clarified subsection (a)(3)(C) to prohibit the use of the state pollution control project standard permit for the purpose of bringing a facility or group of facilities into compliance with an existing authorization or permit, unless approved by the executive director.

New subsection (a)(4) addresses how projects that have been registered under the previous version of §116.617 may continue to be authorized and subsequently meet the conditions of new 116.617. Projects authorized prior to the effective date of this rulemaking may defer the inclusion of emission increases or decreases resulting from the project until future netting calculations. Paragraph (4) allows currently authorized control projects to continue operation uninterrupted until the ten-year renewal anniversary of the original registration or until otherwise incorporated into a permit or standard permit. The review period of 30 days is extended to 45 days to allow evaluation of netting, which would be required under the state pollution control projects standard permit.

New subsection (b) is organized into paragraphs (1) - (5) and includes the general requirements dispersed throughout current §116.617. Subsection (b)(1) requires compliance with the specific conditions of §116.604, Duration and Renewal of Registrations to Use Standard Permits; §116.605, Standard Permit Amendment and Revocation; §116.610, Applicability; §116.611, Registration to Use a Standard Permit; §116.614, Standard Permit Fees; and §116.615, General Conditions. While these requirements are not new, they are reorganized to emphasize and remind applicants of these conditions to ensure submittal of more complete registration information.

New subsection (b)(2) was proposed containing a new requirement specifying that construction or implementation of the state pollution control projects standard permit must begin within 180 days of receiving written acceptance of the registration from the executive director, and that changes to maximum allowable emission rates are effective only upon completion or implementation of the project. In response to public comment, the commission retained the traditional 18-month start of construction window with one 18-month extension consistent with §116.120, Voiding of Permits.

New subsection (b)(3) exempts for state pollution control projects standard permits from the emission limits and distance requirements of permit by rule, §106.261, as referenced in §116.610(a)(1). Pollution control projects are considered environmentally beneficial so any emission increases associated with these projects do not require further authorization.

New subsection (b)(4) contains a new requirement that predictable MSS emissions directly associated with the state pollution control projects standard permit be included in the maximum emissions represented in the registration application, consistent with the ongoing efforts of the commission to authorize all aspects of normal operations.

New subsection (b)(5) contains the same requirements as the previous §116.617(5) and (6) and limits emission increases to only those directly as a result of the pollution control project. Any incidental production capacity cannot be authorized by the state pollution control projects standard permit, but requires some other preconstruction authorization. In response to public comment, the commission included a provision allowing the recovery of lost capacity due to a derate.

New subsection (c) includes the same requirements as in current §116.617(4), as well as two new requirements. Subsection (c) is organized into paragraphs (1) - (3) and pertains to requirements specific to replacement projects. Subsection (c)(1) repeats language from §116.617(4) and allows replacement controls or techniques to be different than those currently authorized as long as the new project is at least as effective in controlling emissions. Subsection (c)(2) allows for increases in MSS emissions if these emissions were reviewed as part of the original authorization for the existing control equipment or technique, and if the increases are necessary to implement the replacement project. Subsection (c)(3) is intended to clarify that the applicable testing and recordkeeping requirements associated with the currently permitted control or technique apply to the replacement to ensure continuing compliance with associated emission limits. If the control or technique is substantially different than an existing control or technique, applicants may also propose equivalent alternatives for review by the executive director.

New subsection (d) clarifies the requirements of current §116.617(4)(C), adds varying fees for different project types, and clearly specifies documentation required in a state pollution control projects standard permit registration application. New subsection (d)(1) includes existing language found in current §116.617(4)(C), but changes the required fees based on whether the project or change in representation results in an increase in the maximum authorized emission rates. Changes to fee requirements are adopted to encourage the installation and use of pollution control projects, especially where there is no increase in emissions or the changes require minimal review. This subsection also describes when a registration should be submitted and when construction or implementation may begin. Various deadlines are proposed to provide flexibility and encourage the use of pollution control projects. Regardless of these deadlines, all projects must meet all requirements of the state pollution control projects standard permit and the responsibility to do so remains with the applicant at all times. New subsection (d)(2) clarifies registration requirements. These include a process and project description, a list of affected permits and emission points, calculated emission rates, the basis of those emission rates, proposed monitoring and recordkeeping, and

the proposed method for incorporating the state pollution control projects standard permit into existing permits. In response to public comment, the commission deleted the term "registration application" and replaced it with "registration."

New subsection (e) incorporates requirements found in §116.615, General Conditions, but expands, clarifies, and focuses those requirements specifically for the state pollution control projects standard permit. New subsection (e)(1) emphasizes that a project should be constructed and operated in accordance with good engineering practices to minimize emissions. New subsection (e)(2) specifically requires copies of documentation to be kept demonstrating compliance with this standard permit.

New subsection (f) provides clarification of the procedures for, and under what conditions, a state pollution control projects standard permit should be incorporated or administratively referenced into a facility's NSR authorization. New subsection (f)(1) applies to facilities authorized by a permit or standard permit. New subsection (f)(1) also applies to those state pollution control projects standard permits that authorize new facilities or changes in method of control and would require incorporation upon the next amendment or renewal of the facility's authorization. The commission is not adopting the proposed requirement for effects review in this rulemaking and will continue to examine the issue during the consideration of additional rulemaking concerning, among other topics, the incorporation of standard permit and permit by rule authorizations (Rule Project No. 2005-016-106-PR, proposed by the commission in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8789, 8808).

New subsection (f)(2) applies to facilities authorized under a permit by rule and requires that all increases in previously authorized emissions, new facilities, or changes in method of control or technique authorized by this standard permit comply with §106.4, except for the emission limitations in §106.4(a)(1) and §106.8.

§116.1200. Applicability.

This new section contains the identical language found previously §116.410 and allows facility owners or operators to apply to the commission for a suspension of permit conditions for the addition, repair, or replacement of control equipment in the event of a catastrophe. This new section is adopted in order to reorganize this chapter to accommodate new sections associated with NSR reform and does not contain substantive changes.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule." Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking revises the rules regarding federal permitting applicability, including adding additional options under federal air quality permitting applicability and plant-wide applicability limit options. The commission modified the rule since proposal to be consistent with the federal rule concerning baseline emission determination, actual-to-projected actual emissions test, and plant-wide applicability limits. The rulemaking revises the existing pollution control projects standard permit. In addition, the rulemaking modifies and adds definitions and changes some general formatting of this chapter. The rules do not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The rules do not exceed a standard set by federal law or exceed an express requirement of state law. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Rather, the federal permitting applicability rules are adopted to incorporate new federal requirements to maintain SIP approval from EPA for the commission's federal air quality permitting program. The remaining changes implement specific state law requirements or are administrative changes. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the THSC and the Texas Water Code (TWC) that are cited in the STATUTORY AUTHORITY section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the rules do not meet any of the four applicability requirements.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed rules. The specific purpose of this rulemaking is to revise the rules regarding federal permitting applicability, including adding additional options under federal air quality permitting applicability and plant-wide applicability limit options. The rulemaking revises the existing pollution control projects standard permit, modifies and adds definitions, and changes some general formatting of this chapter. Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the rules do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, the commission's rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency

with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants are authorized and the adopted revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that the commission's rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (§501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The new and amended sections in this adoption are applicable requirements under Chapter 122, Federal Operating Permits Program. Upon the effective date of this rulemaking, owners or operators subject to the Federal Operating Permit Program that modify any NSR authorized sources at their sites will be subject to the amended requirements of these sections.

PUBLIC COMMENT

The commission held a public hearing on the proposal in Austin on October 27, 2005. During the public comment period, which closed on October 31, 2005, the commission received 17 written comments. All of the commenters opposed the proposal.

RESPONSE TO COMMENTS

EPA, Baker Botts on behalf of the Texas Industry Project (TIP), Dow Chemical Company (Dow), Association of Electric Companies of Texas, Inc. (AECT), Texas Pipeline Association (TPA), Texas Chemical Council (TCC), ExxonMobil Refining and Supply (ExxonMobil), City of Houston, Department of Health and Human Services (HDH), TexasGenco, Sempra Texas Services, LP (Sempra), Texas Instruments (TI), BP Products North America, Inc. (BP), Calpine, Entergy Services, Inc. (Entergy), International Paper, JD Consulting, L.P. (JDC), Celanese Chemicals (Celanese), and the Lone Star Chapter of the Solid Waste Association of North America (TxWANA) submitted written comments during the public comment period. All of the commenters opposed the proposal.

TIP, AECT, TPA, TCC, TexasGenco, TI, BP, Calpine, Entergy, International Paper, Celanese, and Dow commented that substantial departures from federal NSR rules introduce confusion and inconsistencies particularly for companies with multi-state operations, and the introduction of less flexible triggers for federal NSR generates a competitive disadvantage for affected industries. They also commented that TCEQ has traditionally kept federal NSR review separate from permitting procedures under the TCAA and that changes in federal review do not affect the established TCEQ permitting program. They also mentioned the decision of the United States District Court that upheld EPA's rules on actual-to-projected actual emissions and plant-wide applicability limits as further reason not to adopt substantial differences with the federal NSR reform rules.

TIP, AECT, TPA, TCC, ExxonMobil, TI, BP, Calpine, Entergy, International Paper, JDC, Celanese, and Dow commented further that the commission proposal for PALs defeats the purpose of a federal PAL by introducing the BACT criterion. PAL applicants currently holding flexible permits could use ten-year old BACT, while those applicants without a flexible permit would require current BACT, causing an inequity. Plant units not under a PAL would be subject to traditional NSR evaluation. They believe there is not a sound legal basis for applying NSR review to a portion of a plant or project and is inconsistent with federal rules. The commenters noted the operational flexibility and stakeholder vetting that are part of the federal rule. TPA also stated that there were insufficient details on the concept of an east/west split of the state for the implementation of PALs and stated the federal plan should be offered statewide. JDC also suggested adding a provision allowing the conversion of existing flexible permits to PALs.

The commission's proposal on NSR reform was intended to integrate the federal revisions within an existing state program that addressed similar situations concerning plant-wide emission limits and baseline emission determinations. The commission also solicited comments from affected industries on the relative benefits of an integrated program versus an incorporation of the federal program without substantive changes. It is clear from stakeholder meetings and public comment that a program matching the federal rules is the preferred method of accomplishing federal NSR reform. The commission agrees that it has traditionally approached state NSR permitting separately from federal NSR requirements. Additionally, the commission determined that it can continue this approach under federal NSR reform without endangering the attainment of maintenance of NAAQS or affecting public health. The commission is changing the proposal accordingly to adopt rules implementing the federal program on plant-wide applicability limits, actual to projected actual emissions test, and baseline determination without substantive changes to the federal model for these programs.

In summary, PALs may now be considered without specific BACT application to each facility covered under the PAL with a site-wide PAL established as a sum of each facility's baseline emissions. Federal NSR will be required only if there is an increase sought in the PAL. The rules will allow the use of a projected actual emission increase instead of potential to emit in determining project emission increases. Project emission increases may also be reduced by an amount equal to what may have been accommodated within a facility's baseline period.

TIP commented that the proposed rule lacked a regulatory impact analysis. This analysis is required when a major environmental rule exceeds a standard set by federal law unless specifically required under state law. The significant departures from federal law regarding PALs and exclusion of compliant emissions exceeds requirements of federal law.

The commission is adopting rules without substantive difference from federal rules concerning NSR reform and determined that additional regulatory impact analysis is not required.

EPA commented that the definition of actual emissions uses a two-year period where the federal rule uses a 24-month period and requested clarification as the two terms are not necessarily identical.

The commission agrees with this comment, and the rule has been revised by replacing two-year period with 24 months.

TIP and TPA commented that the definition of baseline actual emissions should use the phrase "rate of emissions" instead of "average rate of emissions" as it is closer to federal language.

The commission agrees with the comment, and the phrase "average rate of actual emissions" has been replaced with "rate of emissions."

AECT questioned if the term "facility" has the same meaning in §116.10, and 116.12. Additionally, the term "reviewing authority" should be replaced with "executive director" throughout the new language in §116.12.

The term "facility" is based on the TCAA and has the same meaning throughout Chapter 116 unless stated otherwise. The commission agrees that the term "reviewing authority" could be confusing, and it has been replaced with the term "executive director" in the definitions for baseline actual emissions and net emission increase.

TIP, AECT, TPA, TCC, ExxonMobil, Sempra, TI, BP, Calpine, Entergy, International Paper, Celanese, and Dow expressed concern that the current rule language will exclude malfunction emissions from any baseline consideration. The commenters stated that the preamble indicates that the rule language is intended to include MSS emissions, but it does not clearly accomplish this and appears to cut off inclusion in 2016. They also stated that malfunction emissions, if compliant with federal and state rules, should not be excluded from baseline emissions. They believe issues associated with the authorization of compliant emissions should be addressed in upcoming commission rulemakings in Chapter 101, General Air Quality Rules, and Chapter 116. TIP also commented that it is not necessary to depart from using actual emissions as representative of the first two years of new source operation. AECT commented that specific language authorizing MSS and emission events should be included in the definition of baseline actual emissions. TPA suggested adding a definition of noncompliant emissions.

The federal rule requires that baseline emissions include startup, shutdown, and malfunctions. EPA requested confirmation that the commission's proposal would include these emissions in determining compliance with SIP-approved permit limits. EPA questioned whether the commission intended to retroactively authorize past excess emissions and how baseline emissions will be determined for sources whose startup, shutdown, and malfunction emissions have not been previously authorized. EPA also stated that emissions from startup, shutdown, and malfunctions are not included in the proposed definition of projected actual emissions or in the baseline determination of facilities included under a PAL.

The commission is not changing the rule in response to this comment. The definition of baseline actual emissions requires the exclusion of "noncompliant" emissions from baseline calculations. Baseline MSS emissions may not currently be authorized but future MSS emissions from the modified or affected facilities must be authorized.

TIP, TPA, and Dow commented that the proposed definition of net emissions increase is inconsistent with TCEQ's recent adoption of eight-hour ozone NSR standards, which allows reductions made under mass emissions cap and trade programs to be creditable for netting. The proposed definition disallows decreases that have been relied on in SIPs. AECT and TPA commented that this definition should refer to the definition of baseline actual emissions and the inclusion of MSS and malfunction emissions when calculating a net emission increase. AECT and TPA made the same comment concerning the definition of project net.

The commission is changing the definitions of net emissions increase and project net in response to this comment. Baseline actual emissions are referenced in these definitions. Cap and trade reductions are allowed in netting calculations. The commission does not rely on any facility or site-specific emission decrease to demonstrate attainment or reasonable further progress when using cap and trade programs to provide for emission reductions. A cap and trade program ensures that there must be a real emission decease somewhere in the air shed if there is an emission increase. The five-year netting window ensures that any emission decreases at a site are contemporaneous with proposed increases.

TPA requested a clarification of the term "enforceable as a practical matter," as used in the preamble, when assigning credits for emission reductions.

The commission is changing the rule language in response to this comment and will use the term "enforceable." Limits that are enforceable require demonstration through such measures as documentation, inspection, and monitoring.

AECT commented that the second sentence of §116.12(28)(A) in the definition of project emission increase concerning calculation of emission increases should be moved to §116.12(27), the definition of projected actual emissions. AECT also commented that the use of "modified" and "affected" are undefined and the phrase "at the stationary source" should be added after "facility" in the introductory phrase.

The commission is not changing the rule in response to these comments. The commission determined that the language concerning calculation of emissions is properly located because the consideration of what emissions could have been accommodated in the baseline period is part of determining the project emissions increase, not the projected actual emissions. The terms "modified" and "affected" are used in the EPA rule and guidance, are consistent with everyday usage, and consistent with commission practice, and do not require a definition in the rule. The commenter's suggestion of adding the phrase "at the stationary source" would be inconsistent with EPA rules, which do not limit the project emission increase to facilities at the stationary source.

AECT commented that the definition of *de minimis* threshold test contains the term "major modification threshold" that should be defined in §116.12.

The commission agrees with this comment and is modifying the definitions for more consistent and accurate use of terms that are consistent with federal use. The term "major modification threshold" has been replaced with "significant level" in the definition for major modification (including Table I) and the definition of *de minimis* threshold test. The significant level is identified in the definition for major modification.

AECT commented that the term "federally regulated new source review pollutant" in §116.12(13) differs significantly from the same definition in the federal NSR reform rules. AECT questioned the basis for the difference.

The commission is changing the rule in response to this comment to add a cited definition containing references to federal definitions for the determination of a federally regulated NSR pollutant.

AECT commented that the definition of major stationary source in §116.12(15) contains a sentence stating "a source that is major for one PSD pollutant is considered major for all PSD pollutants." AECT stated that there is no support for the sentence in EPA rules or guidance.

The commission disagrees that this concept requires change. The commission modified this sentence to clearly indicate that a source that has emissions of any federally regulated NSR pollutant greater than the major source level is a major stationary source for all PSD pollutants. This policy is consistent with the EPA definition of major stationary source and federal guidance.

AECT commented that the definition of major modification in §116.12(16) should be changed to indicate that a project emission increase and the net emission increase must be at or above the major source threshold for the modification to be considered major. This concept should also be applied at non-PAL facilities.

The commission is not changing the rule in response to this comment. At major stationary sources, the project emission increase and the net emission increase must be greater than the significant level (or threshold) for the modification to be major. If the source is not major, the project emissions increase must exceed the major source threshold for the modification to be major. This is consistent with federal applications.

TxWANA requested clarification that provisions in the definition of major source in §116.12 exempting the use of alternate fuels from being considered a major modification would apply to landfill-generated gas.

The commission agrees with this comment. The use of landfill gas as an alternate fuel, if that is the only change, would not constitute a major modification.

EPA questioned whether a significant emission increase determination would yield the same result under state and federal rules.

The commission is not changing the rule in response to this comment. A significant emission increase would be the same under the commission's rule as it would be under the federal language. Emissions that deviate from those authorized are considered noncompliant and the treatment of the associated emissions would vary, depending on the circumstances. For example, if a unit's annual operating hours were limited to 2,000, the allowable emission rate associated with operating beyond 2,000 hours would be considered zero, regardless of whether the tons per year limit had been exceeded by the source. If the hourly emission rate had been exceeded, emissions above the hourly emissions rate would be considered noncompliant and would not be in the baseline.

EPA requested clarification that the commission consider municipal incinerators capable of charging 50 tons of refuse per day as major sources.

The commission considers these municipal incinerators as major sources.

EPA requested clarification of the provision in the definition of major modification that allows a change in a facility in a PAL that causes a significant increase for a pollutant at a non-PAL facility to be considered a major modification.

Consistent with its decision to adopt rules equivalent with the federal PAL, the commission removed this language. Emission increases will be included in PAL and will constitute a major modification only if the PAL is exceeded by a significant level.

EPA requested clarification of the term "federal permit of the same type" as used in §116.12(18)(A)(ii). Further, there is no provision stating that an increase or decrease in sulfur dioxide, particulate matter, or nitrogen oxides occurring before a minor source baseline date is creditable only if it is required in calculating the amount of maximum increases that remain available.

The commission is changing the rule in response to these comments, for clarity, and substituted the term "NSR permit" for permit of the "same type." The commission is also adding the EPA-recommended change concerning increases or decreases in sulfur dioxide, particulate matter, or nitrogen oxides for consistency with federal rules.

EPA questioned why the commission is not allowing credit for emission decreases in §116.12(18)(C)(iii) if it is relied upon for issuing a PAL. EPA also questioned why reduction credits cannot be used in determining an offset ratio if the reduction was used in issuing a PAL.

Consistent with its decision to adopt rules equivalent with the federal PAL, the commission removed this language.

EPA commented that the following definitions were not proposed for the commission's PAL program and should be added or an equivalency demonstration provided: allowable emissions, small emissions unit, major emissions unit, major facility, PAL effective period, and significant emissions unit.

Allowable emissions are defined in §116.10. The PAL is being incorporated into the commission rules in the same manner as state NSR permits. The PAL permits will have the same ten-year renewal requirement, and it has not been necessary to define an effective period. Consistent with its decision to adopt rules equivalent with the federal PAL, the definitions for major facility, small facility, and significant facility have been added. The commission used the term "facility" as a substitute for "emissions unit" for consistency with its use of terms. The term "facility" is synonymous with "emissions unit."

EPA commented that the definition of PAL major modification lacked the federal definitions of major modification and net emissions increase and requested an equivalency demonstration based on their exclusion.

The commission is not changing the rule in response to the comment. The EPA definition for PAL major modification contains language that states "notwithstanding the definitions for major modification and net emissions increase." These definitions already exempt PAL facilities so the additional language is unnecessary.

EPA commented that the definition of PAL pollutant does not require that the PAL be established at a major source.

Consistent with its decision to adopt a PAL program equivalent with the federal model, the commission added the suggested language to the definition.

EPA commented that §116.121(e) differs from the federal rule and only requires that information documenting projected actual emissions and any excluded emissions be available for review by the executive director and the general public. For equivalency with the federal rule, all information required under §116.121 must be made available to the executive director and the general public.

Consistent with its decision to adopt a PAL equivalent with the federal model, the commission added the necessary language in this section.

AECT suggested revising the first sentence in §116.121(a) to refer to a "project emission increase" because that is a defined term. A similar change should be made in §116.151.

The commission did not change §116.121(a) in response to this comment. The project emission increase must be determined for every project and is compared to the significance level. It may be determined using projected actual emissions and/or excluding emissions that could have been accommodated in the baseline and will therefore be subject to the requirements of §116.121. If it were determined using the potential to emit, these requirements would not apply.

EPA commented that §116.150 makes nonattainment review in relation to a change in an area's attainment status contingent on the date that a complete permit application is received. This differs from federal guidance, which bases nonattainment review on the issuance date of a permit.

In order to remain consistent with federal rules, the commission removed the date from the rule.

EPA, TIP, and Dow commented that the commission should modify §116.150(c)(3) to state that any increase in volatile organic compounds or nitrogen oxides that exceeds the major modification threshold in the definition of major modification will be subject to a netting test. Dow stated that the concept could also be incorporated by adding to the definition of project net in §116.12.

The commission agreed with the comment, and §116.150(c)(3) has been revised to clarify when a netting test will be required.

AECT commented that the terms "facility" and "facilities" in §116.151 should be replaced with "stationary source(s)" and that the term "modification" is undefined. In subsection (c), the term "aggregated over the contemporaneous period" is superfluous as the concept is included in the defined term "net emissions increase." AECT made similar comments about the use of these terms in §116.160 and also suggested that the term "major source" be replaced with "major stationary source."

The commission disagrees with AECT about the use of the term "facility." The commission's current NSR permitting program is based on the authorization of facilities and the term is defined in THSC, TCAA, Chapter 382, §382.002(6) and in the commission's rules. The use of the term is well-established and causes no significant difference in the issuance of PAL permits. The commission determined that the term is used appropriately in §116.151 and 116.160. The term "modification" has not been defined by EPA for NSR and the commission determined that a Texas definition is not appropriate or necessary because the term has an accepted meaning, and the term "modification of existing facility" is defined in TCAA, §382.002(9). The commission agrees with AECT concerning the use of the term "aggregated over the contemporaneous period" and the term has been removed from §§116.150, 116.151, and 116.160. The terms "major source" and "major stationary source" have the same meaning, and the commission has not made the suggested change.

EPA commented that the commission should confirm that "replacement units" as referenced in §116.151 and §116.160 will be treated as existing units for purposes of federal NSR and emission reductions from the shutdown of a replaced unit will not be used for netting or offsets.

The commission agrees with this comment and added definitions to §116.12 for "Replacement facility" and "Basic design parameters" to address EPA concerns.

AECT commented that the understanding is that the date July 1, 1999, in §116.160(c)(1) refers only to the phrase "the definitions for protection of visibility and promulgated in 40 CFR §51.301" and does not apply to 40 CFR §52.21. If this is not the case, the commission will have failed to incorporate 40 CFR §52.21 and the NSR reform rule adopted in December 2002.

AECT's understanding is correct; the July 1, 1999, date does not apply to 40 CFR §52.21.

Dow, Calpine, International Paper, Celanese, and TI commented that the provision in §116.160(c)(4) requiring a determination to issue a PSD permit within one year after receipt of a completed application should be deleted. The commenters agreed that most permits can be issued within that time frame, but permit timing should not be added to regulations so as to allow maximum flexibility to resolve complex technical issues.

The commission agrees with this comment and removed the one-year requirement.

TxWANA commented that the commission should create an alternative permitting process for landfill gas-to-energy projects that would allow for quicker authorization of those projects that qualify as major sources or major modifications. The commenter's specific suggestion is that the municipal solid waste landfill air standard permit currently proposed as an amendment to 30 TAC Chapter 330, Municipal Solid Waste, be used as the base authorization mechanism. Landfill gas projects that would qualify as major would, by rule, be directed into case-by-case permit review under Chapter 116 but would be exempt from contested case hearings. TxWANA stated that this abbreviated process would help promote these environmentally beneficial projects.

The commission did not change the rule in response to this comment. The subject of an abbreviated permitting process for major source landfill gas energy projects was not in the proposal and thus unavailable for public comment. The commission staff is evaluating TxWANA's proposal for a possible future rulemaking.

EPA requested that the commission explain how its permitting process allowing the establishment of a separate PAL permit works with the federal requirement to establish a PAL within an existing permit. The commenter also requested an explanation of how a partial PAL (one not covering all facilities at a site) will determine NSR applicability, including netting procedures, for non-PAL facilities. EPA also requested an explanation of how conditions in individual permits remain in effect after issuance of a PAL permit.

The commission is unaware of any requirement to establish the PAL in an existing NSR permit and expects that most PALs will be consolidated with an existing state NSR permit. The commission sees no reason to limit the option of establishing a separate PAL permit for a site. The commission decided to adopt a PAL closer to the EPA model so the partial PAL has been removed as an option. A PAL permit contains the conditions necessary to satisfy PAL requirements and has no effect on the requirements associated with any state NSR authorization.

EPA commented that §116.186 requires that each PAL contain all the requirements of a PAL as listed in 40 CFR §51.165 and §51.166. It is not clear that the commission's rule contains this requirement or the requirement that PAL facilities use a monitoring system meeting the requirements of 40 CFR §51.165(f) and §51.166(w).

The commission is adopting language consistent with the federal requirements. To simplify use of this rule, the commission is including the necessary language in §116.186 rather than adopt the federal requirements by reference. The language concerning

monitoring was added as §116.186(b)(4)(C) and (D). The commission also added subsection (b)(10) allowing the extension of a PAL while an application for renewal is being considered.

TIP commented that language in §116.186(b)(1) - (4) and §116.186(b)(6) and (7) is not found in the federal PAL rule and that the commission should deviate from the federal requirements only when necessary to integrate PAL into the commission rules. It made the same comment on §116.186(c)(2)(E), concerning alternative monitoring approach and subsection (c)(4), concerning implementation schedules for installation of BACT or BACT-equivalent controls.

The commission is retaining §116.186(b)(1) - (4) and §116.186(6) and (7) in this adoption. These paragraphs identify procedures and requirements for sampling and recordkeeping that ensure proper communication with the commission and compliance with the permit and do not conflict with the federal PAL rule. The commission is also retaining §116.186(c)(2)(E) because it determined alternative monitoring is a part of the federal PAL rule. The commission did not adopt §116.186(c)(4) because it was inconsistent with the federal PAL rule.

EPA requested that the commission clarify whether its rule will establish a PAL based on the application of BACT or baseline actual emissions of included facilities. It also requested that the commission explain the use of allowable emissions in place of potential to emit when considering addition of facilities to a PAL. EPA commented that the commission's rules do not contain the provision requiring subtraction of emission level from a PAL for permanently shut down facilities.

Consistent with its decision to adopt a PAL equivalent with the federal model, the commission set the PAL based on baseline emissions. Facilities in the PAL are still subject to state permitting requirements, including any allowable emissions rate authorized by state law that effectively limits the potential to emit of that facility. The provision requiring subtraction of emission level from a PAL for permanently shut down facilities has been added to §116.188, Plant-wide Applicability Limit.

TIP commented that language in §116.188(1) - (3), concerning addition of significance levels to PALs and use of potential to emit for new facilities added to a PAL is not comparable to the federal rule and that the commission should deviate from the federal requirements only when necessary to integrate PAL into the commission rules.

The commission disagrees with the comment. The federal language addresses significance levels in PALs and the use of potential to emit in 40 CFR §51.165(f)(6) and §51.166(w)(6). The commission is retaining the language in §116.188(1) and (2). The commission agrees that §116.188(3) is not necessary and it has been removed from the rule.

EPA stated that §116.188 has no provisions corresponding to federal rules for requesting an increase in a PAL and it is unaware of a federal requirement to remove baseline emissions of new or modified facilities from the PAL. EPA also commented that §116.188(4) discusses regulatory requirements that have a future compliance date but closes the provision by referring to requirements that are effective prior to PAL issuance. The commenter requested that the commission clarify this provision and demonstrate how it meets federal requirements.

Consistent with its decision to adopt a version of PAL closer to the federal model, the commission removed the noted language that is not required under the federal rules.

EPA stated that §116.190 does not contain a federally equivalent provision that a physical or operational change not causing an exceedance of a PAL is not subject to federal restrictions on relaxing enforceable emission limitations to avoid NSR review.

Consistent with its decision to adopt a version of PAL equivalent to the federal model, the commission added the federally equivalent language as a new subsection (c).

EPA and TIP commented that the federal PAL requirements allow the permitting authority to consider the application of BACT or equivalent technology where a facility proposes to add or modify units in such a way as to cause an exceedance of the PAL. Such an increase would be authorized only if the source would not be able to maintain emissions below the PAL, assuming application of BACT or BACT-equivalent controls. EPA requested an explanation of how the commission's requirement to install BACT compares with the federal rule. The commenter also requested that the commission explain how its requirements to increase the PAL compare to the federal rule. TIP stated that the term "major modification" is used rather than "PAL major modification" and that a control technology implementation schedule for BACT went beyond federal requirements.

Consistent with its decision to adopt a PAL equivalent to the federal model, the commission added §116.192(a)(1) addressing the issue of potential BACT application when a PAL permit holder seeks an amendment or alteration.

EPA stated that the commission has not addressed these areas in its proposed PAL rules: contents of a PAL permit; reopening a PAL permit; increasing a PAL; revalidation of data used to establish a PAL; and recordkeeping.

Consistent with its decision to adopt a PAL equivalent to the federal model, the commission made extensive revisions to §116.192 that include the requirements for reopening a PAL permit and increasing a PAL. Additionally, the commission expanded the recordkeeping requirements in §116.186(b)(4) to incorporate all the requirements in the EPA rule. Section 116.186 specifies the contents of a PAL permit and includes EPA requirements with the addition of §116.186(b)(10). The revalidation of data used to establish the PAL was in the proposed rule and is found in §116.186(b)(9) of the adopted rule.

EPA commented that the permit alteration and amendment of provisions in §116.192 must be consistent with the SIP-approved provisions of §116.116, Changes to Facilities.

The commission disagrees with this comment. Section 116.116 identifies requirements associated with the authorization of facilities that emit air contaminants. A PAL permit does not authorize facilities that emit air contaminants and is not subject to those requirements.

EPA commented that the commission appears to rely on 30 TAC Chapter 39, Public Notice, to meet the public notice requirements for PALs and noted that a second public notice prior to permit issuance is not required for all air permits and may not be consistent with federal requirements to notify the public of the agency's approval of a permit. EPA also commented that Chapter 39 has not been approved into the Texas SIP. EPA also stated that PALs are not referenced in Chapter 39 and requested a summary of Chapter 39 requirements for initial, renewed, or amended PALs.

The commission modified §116.194, Public Notice and Comment, to require notification of intent to issue a permit allowing for public comment and an executive director response. The

commission determined that they are equivalent to federal notice requirements for PALs. Although Chapter 39 has not been approved by EPA as a revision to the SIP, the commission treats the rules, first submitted in 1999, as SIP requirements. A reference to PALs in Chapter 39 is not necessary and could not be added at this adoption because the applicable sections were not opened for public notice.

EPA commented that the requirements in §116.196 to identify qualified facilities under §116.10 and to include rolling 12-month emission rates for non-qualified facilities are not in federal rules and requested a demonstration that such inclusions result in a program at least as stringent as the federal PAL. TIP also noted this difference between the proposal and the federal rule and urged the commission to adopt the federal PAL without substantive differences.

Consistent with its decision to adopt a PAL equivalent to the federal model, the commission removed the reference language in the adopted rule.

EPA commented that §116.196(e)(B) would be clearer if the commission stated that the PAL is being set at a higher level in accordance with §116.188(3) and §116.192(a).

The commission agrees with this comment and §116.192(a) has been referenced as suggested.

EPA commented that §116.198 is not clear on whether a PAL that is not renewed expires at the end of the PAL effective period in 40 CFR §51.165(f)(9)(B). It also commented that the section does not have a requirement to include proposed allowable emission limits for each emission unit within the federal time frame for PAL renewals or to adjust emissions. The requirement in the section that requires documentation of technology upgrades is not found in federal rules.

Consistent with its decision to adopt a PAL equivalent to the federal model, the commission is adopting EPA's recommended additions. The commission removed the language concerning the documentation of technology upgrades because this requirement is not in the federal rule.

AECT commented that §116.610(b) should be revised to refer to major stationary sources, rather than "major source or major modification," and also reference §116.12 as the location of the definition of major modification.

For consistency in the use of terms, the commission is modifying the appropriate term to refer to major stationary sources and included a reference to §116.12 as the location for the definitions rather than a federal rule reference.

HDH commented that the public comment period was too short and should be extended with additional hearings in Dallas, Houston, and Beaumont.

The commission disagrees that the chance for public participation in development of this proposal was too short. The commission met its legal obligation for length of the public comment period and conducted two stakeholder meetings during the development of this proposal. Representatives of industry and environmental organizations were invited on both occasions.

HDH commented that it encourages state rules that are more stringent than the federal. The City of Houston, along with several urban areas within the state, is currently classified as nonattainment and it views the more stringent rules as aids toward achieving attainment, or at least maintaining the severity of the nonattainment designations.

The commission did not change the rule in response to the comment. Neither state permitting law nor the federal NSR permitting program are designed to be control measures for specific nonattainment areas. The commission adopted specific rules regarding control of nitrogen oxide and volatile organic compound emissions from facilities in Houston and other nonattainment areas in its efforts to attain the NAAQS. The commission will consider more stringent rules if air quality goals are not achieved.

TIP, Entergy, Calpine, BP, TI, Celanese, and AECT commented that beyond the netting change required in response to the District of Columbia Circuit Court decision in *State of New York, et al. v. United States Environmental Protection Agency*, the proposed changes to the existing state Pollution Control Project Standard Permit are unnecessary and inappropriate.

The commission is not changing the rule language in response to this comment. In addition to the change concerning netting on pollution control projects required as a result of this court decision concerning NSR reform, the commission is adopting changes to §116.617, which are intended to clarify language and improve organization and readability. These changes include grouping similar or related requirements together and ordering those groups in a logical progression. To better organize general requirements for standard permits, the applicable conditions of Chapter 116, Subchapter F, Standard Permits, were added in subsection (b), and a list of registration requirements were added to subsection (d) to ensure that all registration information is submitted. Similarly, subsection (e) incorporates requirements found in §116.615, General Conditions, and expands, clarifies, and focuses them specifically for the state pollution control project standard permit.

TIP requested confirmation that the standard permit still authorizes collateral emission increases for state NSR purposes. TIP commented that §116.617(9) should be retained.

TIP is correct that the pollution control project standard permit will authorize collateral emission increases. The commission determined that §116.617(9) is redundant in this adopted version of the pollution control project. Projects authorized under this standard permit will be evaluated through netting for significance. Any project qualifying as a significant change will be referred into the appropriate authorization methods of Chapter 116. Projects remaining below the significant level are not affected.

EPA commented that it does not consider this a good time for the commission to adopt any kind of pollution control regulation because of pending litigation concerning the District of Columbia Circuit Court decision, which vacated the federal pollution control project rule.

The commission is not changing the rule in response to this comment. The state pollution control project rule being amended is independent of the federal pollution control project rule vacated by the court. The federal rule addressed the issue of exclusion of pollution control project emissions from federal NSR or PSD review, a subject not addressed in the state rule. Litigation, appeals, and interpretation of court decisions may not be resolved for some time, and the commission desires to continue authorizing beneficial projects that reduce the quantity and severity of pollutants emitted to the atmosphere.

EPA requested the commission's rationale for qualifying the substitution of compounds as a pollution control project under §116.617(a)(2)(C).

The commission determined that substituting compounds used in manufacturing can reduce or control the amount of pollution emitted to the atmosphere and is therefore within the original scope and intent of the pollution control project. This substitution must be approved by the executive director.

TIP, TPA, TCC, and AECT all commented on §116.617(a)(4), which requires that past increases authorized under a standard permit be included in netting. The commenters claim that the retroactive nature of this requirement is unnecessary and impractical and request that the requirement only be applied prospectively.

The commission is not changing the rule in response to this comment and disagrees that the requirement is unnecessary. The commission determined that pollution control projects, even those with incidental emission increases in other contaminants, are beneficial to the environment, and wants to encourage them. However, in order to remain consistent with the previous rule, the emission increases and decreases from the pollution control project must be shown in subsequent site netting exercises. The requirement for immediate netting on new projects was added as a result of the District of Columbia Circuit Court decision.

TIP and EPA commented that they will review the pollution control project for consistency with 40 CFR §51.160 and §51.161. They asked the commission for a determination of whether the incidental emission increases resulting from projects could interfere with attainment or maintenance of NAAQS. In addition, EPA asked how the pollution control project complies with the public participation requirements of 40 CFR §51.161, particularly concerning §116.617(d)(1)(B), which allows for increases in emissions without public notice.

The commission is not changing the rule in response to these comments. The new pollution control project contains language prohibiting incidental emission increases that would prevent achievement of an NAAQS. Specifically, under §116.617(a)(4), all increases and decreases must be included in netting calculations. If the project emission increases are not below significance thresholds for PSD or nonattainment review, the standard permit cannot be used. For projects under PSD or nonattainment thresholds, the maximum emission rates identified in the standard permit registration serve as an enforceable emission limit.

The executive director uses the 30-day period prior to start of construction to verify that the collateral emissions are properly quantified and that there is not a significant net emission increase associated with the proposed project. Incidental increases associated with a pollution control project must have no harmful off-property effects, and the commission determined that the emission decreases are of benefit to the environment. Based on these conditions, the commission further determined that a public review of each individual application of the pollution control project was not necessary and would slow beneficial projects. This is not a new condition of the pollution control project, and the provision was available for public comment at the original adoption of the pollution control project and during this amendment.

TIP, AECT, and Dow commented that the proposed §116.617(f) requires impacts review upon a mandatory incorporation of the standard permit into an existing NSR permit. The TCAA does not require a re-review of project effects on incorporation.

The pollution control project standard permit can be used to make physical or operational changes at a facility instead of a permit amendment under §116.110, Applicability, and no effects review is required for initial construction. An effects review will be required at the incorporation of the pollution control project into the NSR permit. The commission is not adopting the proposed requirement for effects review in this rulemaking and will continue to examine the issue during the consideration of additional rulemaking concerning, among other topics, the incorporation of standard permit and permit by rule authorizations (Rule Project No. 2005-016-106-PR, proposed by the commission in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8789, 8808).

TIP, AECT, and Dow commented regarding the requirement in §116.617(b)(2) limiting the start of construction to within 180 days of registration. They stated that the commission traditionally allows up to 18 months to start construction, and reducing the time allowed is unnecessary and unreasonable. They suggested that the time allowed be increased to 18 months with an automatic 18-month extension to be consistent with other state and federal rules and guidance. Dow also requested that the commission remove the requirement to notify upon the start of construction and the start of operation.

The commission agrees with the comment and is modifying the rule language. The commission is retaining the start of construction and operation notification in order to track construction progress.

TIP, AECT, and Dow commented that the proposed requirement that MSS emissions associated with replacement projects can only be authorized if necessary to the control project and authorized originally is contrary to the initiative to authorize MSS emissions and has no relationship to NSR reform. They also commented that provisions requiring the permitting of predictable emissions appear to be out of context in this rulemaking and there was no public notice on the potential scope of such an authorization. This issue should be deferred to the subsequent rulemaking on this subject. Dow commented that MSS should not be addressed in the standard permit.

The commission has not changed the rule in response to this comment. The commission requires the authorization of MSS emissions for new pollution control projects. Authorizing MSS for a replacement project when an initial authorization has not been made allows the MSS emissions to be included within the NSR permit without an effects evaluation. Because some pollution control projects can constitute facilities, the commission determined that the authorization of MSS emissions within the standard permit is necessary to an accurate review of project emissions.

TIP, TexasGenco, Sempra, and AECT opposed the deletion of the provision in §116.617(5), which allows the recovery of lost capacity caused by a derate resulting from the installation of control equipment or the implementation of a control technique. They stated that the language resulted from extensive input from stakeholders during a previous rulemaking, and asked that the commission provide a basis for its proposed removal. In addition, EPA requested that the authorizations be identified that are referred to as "additional authorizations" in the proposed rule. TIP specifically requested that the standard permit continue to authorize collateral increases if associated with the replacement of a control.

The commission agrees with the commenters and is retaining the language authorizing the recovery and utilization of capacity lost due to a pollution control project. All production increases

associated with a pollution control project, not including capacity recovered, must qualify for and be authorized under §116.110 or §116.116 prior to the use of the increased capacity. Additional authorization means a permit amendment under §116.110 or the use of a permit by rule. The commission agrees that the standard permit will continue to authorize collateral increases associated with control replacement.

EPA asked how the commission would address a situation under subsection (d)(1)(B) - (D) where it is determined a pollution control project results in a control strategy violation or interferes with an NAAQS after construction has begun. It asked for a demonstration of how the provisions of subparagraphs (B) - (D) meet the requirements of 40 CFR §51.160(a) and (b). EPA questioned whether a pollution control project could begin operation prior to the commission completing an evaluation under 40 CFR §51.160(a) and how the commission would prevent construction of a project. It stated that the subparagraph is not clear that construction of the pollution control project is solely at the risk of the owner if the commission does not find the project meets 40 CFR §51.160(a). EPA had similar comments concerning §116.617(f)(1)(A).

Because netting is required to show that a project does not trigger PSD or nonattainment reviews, the application of 40 CFR §51.160(a) should not be necessary. If a project is not constructed as represented, the commission has the authority to take enforcement action if any standard permit conditions are violated. The commission notes that it is always the responsibility of the owner or operator to evaluate applicability and determine compliance with all federal and state rules and regulations.

AECT recommended that the term "registration application" in §116.617(d)(1) be replaced by "registration" since no application is required under the standard permit process.

The commission agrees with the comment and made the necessary substitution. The commission further notes that evaluation of the proposed project requires the submittal of appropriate documentation.

TIP and AECT commented that the proposed language in §116.617(d)(1)(B) requiring notification of changes causing emission increases be submitted 30 days prior to construction should be deleted. They stated that the commission has not provided justification for the proposed change and that it is contrary to the streamlining intent of NSR reform.

The commission is not changing the rule in response to these comments. Those changes, which include revisions to construction and increased emissions, should be reported 30 days prior to implementation to allow time for review and approval of the revised project.

SUBCHAPTER A. DEFINITIONS

30 TAC §116.12

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401 *et seq*., which requires permits for construction and operation of new or modified major stationary sources.

The amendment implements THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, and 382.0518; and FCAA, 42 USC, §§7401 *et seq*.

§116.12. Nonattainment and Prevention of Significant Deterioration Review Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. The terms in this section are applicable to permit review for major source construction and major source modification in nonattainment areas. In addition to the terms that are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in Chapter 116, Subchapter B, Divisions 5 and 6 of this title (relating to Nonattainment Review and Prevention of Significant Deterioration Review); and Chapter 116, Subchapter C, Division 1 of this title (relating to Plant-Wide Applicability Limits), have the following meanings, unless the context clearly indicates otherwise.

(1) Actual emissions--Actual emissions as of a particular date are equal to the average rate, in tons per year, at which the unit actually emitted the pollutant during the 24-month period that precedes the particular date and that is representative of normal source operation, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plant-wide applicability limit. Instead, paragraph (3) of this section relating to baseline actual emissions shall apply for this purpose. The executive director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. The executive director may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions, e.g., when the allowable limit is reflective of actual emissions. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) Allowable emissions--The emissions rate of a stationary source, calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits that restrict the operating rate, or hours of operation, or both), and the most stringent of the following:

(A) the applicable standards specified in 40 Code of Federal Regulations Part 60 or 61;

(B) the applicable state implementation plan emissions limitation including those with a future compliance date; or

(C) the emissions rate specified as a federally enforceable permit condition including those with a future compliance date.

(3) Baseline actual emissions--The rate of emissions, in tons per year, of a federally regulated new source review pollutant.

(A) For any existing electric utility steam generating unit, baseline actual emissions means the rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The executive director shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(B) For an existing facility (other than an electric utility steam generating unit), baseline actual emissions means the rate, in tons per year, at which the facility actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received for a permit. The rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply with the exception of those required under 40 Code of Federal Regulations Part 63, had such major stationary source been required to comply with such limitations during the consecutive 24-month period.

(C) For a new facility, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and for all other purposes during the first two years following initial operation, shall equal the unit's potential to emit.

(D) The actual rate shall be adjusted downward to exclude any non-compliant emissions that occurred during the consecutive 24-month period. For each regulated new source review pollutant, when a project involves multiple facilities, only one consecutive 24-month period must be used to determine the baseline actual emissions for the facilities being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant. The rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount. Baseline emissions cannot occur prior to November 15, 1990.

(E) The actual emissions rate shall include fugitive emissions to the extent quantifiable. Until March 1, 2016, emissions previously demonstrated as emissions events or historically exempted under Chapter 101 of this title (relating to General Air Quality Rules) may be included to the extent that they have been authorized, or are being authorized.

(4) Basic design parameters--For a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British thermal units content shall be used for determining the basic design parameters for a coal-fired electric utility steam generating unit. The basic design parameters for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator shall consider the primary product or primary raw material when selecting a basic design parameter. The owner or operator may propose an alternative basic design parameter for the source's process units to the executive director if the owner or operator believes the basic design parameter as defined in this paragraph is not appropriate for a specific industry or type of process unit. If the executive director approves of the use of an alternative basic design parameter, that basic design parameter shall be identified and compliance required in a condition in a permit that is legally enforceable.

(A) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter.

(B) If design information is not available for a process unit, the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(C) Efficiency of a process unit is not a basic design parameter.

(5) Begin actual construction--In general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

(6) Building, structure, facility, or installation--All of the pollutant-emitting activities that belong to the same industrial grouping, are located in one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities are considered to be part of the same industrial grouping if they belong to the same "major group" (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(7) Clean coal technology--Any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

(8) Clean coal technology demonstration project--A project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2.5 billion for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the United States Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

(9) Commence--As applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(A) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(B) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(10) Construction--Any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

(11) Contemporaneous period--For major sources the period between:

(A) the date that the increase from the particular change occurs; and

(B) 60 months prior to the date that construction on the particular change commences.

(12) *De minimis* threshold test (netting)--A method of determining if a proposed emission increase will trigger nonattainment or prevention of significant deterioration review. The summation of the proposed project emission increase in tons per year with all other creditable source emission increases and decreases during the contemporaneous period is compared to the significant level for that pollutant. If the significant level is exceeded, then prevention of significant deterioration and/or nonattainment review is required.

(13) Electric utility steam generating unit--Any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is included in determining the electrical energy output capacity of the affected facility.

(14) Federally regulated new source review pollutant--As defined in subparagraphs (A) - (D) of this paragraph:

(A) any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the United States Environmental Protection Agency;

(B) any pollutant that is subject to any standard promulgated under Federal Clean Air Act (FCAA), §111;

(C) any Class I or II substance subject to a standard promulgated under or established by FCAA, Title VI; or

(D) any pollutant that otherwise is subject to regulation under the FCAA; except that any or all hazardous air pollutants either listed in FCAA, §112 or added to the list under FCAA, §112(b)(2), which have not been delisted under FCAA, §112(b)(3), are not regulated new source review pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under FCAA, §108.

(15) Lowest achievable emission rate--For any emitting facility, that rate of emissions of a contaminant that does not exceed the amount allowable under applicable new source performance standards promulgated by the United States Environmental Protection Agency under 42 United States Code, §7411, and that reflects the following:

(A) the most stringent emission limitation that is contained in the rules and regulations of any approved state implementation plan for a specific class or category of facility, unless the owner or operator of the proposed facility demonstrates that such limitations are not achievable; or

(B) the most stringent emission limitation that is achieved in practice by a specific class or category of facilities, whichever is more stringent.

(16) Major facility--Any facility that emits or has the potential to emit 100 tons per year or more of the plant-wide applicability limit (PAL) pollutant in an attainment area; or any facility that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant in Table I of this section for nonattainment areas.

(17) Major stationary source--Any stationary source that emits, or has the potential to emit, a threshold quantity of emissions or more of any air contaminant (including volatile organic compounds (VOCs) for which a national ambient air quality standard has been issued. The major source thresholds are identified in Table I of this section for nonattainment pollutants and the major source thresholds for prevention of significant deterioration pollutants are identified in 40 Code of Federal Regulations (CFR) §51.166(b)(1). A source that emits, or has the potential to emit a federally regulated new source review pollutant at levels greater than those identified in 40 CFR §51.166(b)(1) is considered major for all prevention of significant deterioration pollutants. A major stationary source that is major for VOCs or nitrogen oxides is considered to be major for ozone. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this definition whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in 40 CFR §51.165(a)(1)(iv)(C).

(18) Major modification--As follows.

(A) Any physical change in, or change in the method of operation of a major stationary source that causes a significant project emissions increase and a significant net emissions increase for any federally regulated new source review pollutant. At a stationary source that is not major prior to the increase, the increase by itself must equal or exceed that specified for a major source . At an existing major stationary source, the increase must equal or exceed that specified for a major modification to be significant. The major source and significant thresholds are provided in Table I of this section for nonattainment pollutants. The major source and significant thresholds for prevention of significant deterioration pollutants are identified in 40 Code of Federal Regulations §51.166(b)(1) and (23), respectively.
Figure: 30 TAC §116.12(18)(A)

(B) A physical change or change in the method of operation shall not include:

(i) routine maintenance, repair, and replacement;

(ii) use of an alternative fuel or raw material by reason of an order under the Energy Supply and Environmental Coordination Act of 1974, §2(a) and (b) (or any superseding legislation) or by reason of a natural gas curtailment plan under the Federal Power Act;

(iii) use of an alternative fuel by reason of an order or rule of 42 United States Code, §7425;

(iv) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before December 21, 1976 (unless such change would be prohibited under any federally enforceable permit condition established after December 21, 1976) or the source is approved to use under any permit issued under regulations approved under this chapter;

(vi) an increase in the hours of operation or in the production rate (unless the change is prohibited under any federally

enforceable permit condition that was established after December 21, 1976);

(vii) any change in ownership at a stationary source;

(viii) any change in emissions of a pollutant at a site that occurs under an existing plant-wide applicability limit;

(ix) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated;

(x) for prevention of significant deterioration review only, the installation or operation of a permanent clean coal technology demonstration project that constitutes re-powering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis; or

(xi) for prevention of significant deterioration review only, the reactivation of a clean coal-fired electric utility steam generating unit.

(19) Necessary preconstruction approvals or permits--Those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations that are part of the applicable state implementation plan.

(20) Net emissions increase--The amount by which the sum of the following exceeds zero: the project emissions increase plus any sourcewide creditable contemporaneous emission increases, minus any sourcewide creditable contemporaneous emission decreases. Baseline actual emissions shall be used to determine emissions increases and decreases.

(A) An increase or decrease in emissions is creditable only if the following conditions are met:

(i) it occurs during the contemporaneous period;

(ii) the executive director has not relied on it in issuing a federal new source review permit for the source and that permit is in effect when the increase in emissions from the particular change occurs; and

(iii) in the case of prevention of significant deterioration review only, an increase or decrease in emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(B) An increase in emissions is creditable if it is the result of a physical change in, or change in the method of operation of a stationary source only to the extent that the new level of emissions exceeds the baseline actual emission rate. Emission increases at facilities under a plant-wide applicability limit are not creditable.

(C) A decrease in emissions is creditable only to the extent that all of the following conditions are met:

(i) the baseline actual emission rate exceeds the new level of emissions;

(ii) it is enforceable at and after the time that actual construction on the particular change begins;

(iii) the executive director has not relied on it in issuing a prevention of significant deterioration or a nonattainment permit;

(iv) the decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(v) in the case of nonattainment applicability analysis only, the state has not relied on the decrease to demonstrate attainment or reasonable further progress.

(D) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(21) Offset ratio--For the purpose of satisfying the emissions offset reduction requirements of 42 United States Code, §7503(a)(1)(A), the emissions offset ratio is the ratio of total actual reductions of emissions to total emissions increases of such pollutants. The minimum offset ratios are included in Table I of this section under the definition of major modification. In order for a reduction to qualify as an offset, it must be certified as an emission credit under Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking or Trading; or Discrete Emission Credit Banking and Trading), except as provided for in §116.170(b) of this title (relating to Applicability of Emission Reductions as Offsets). The reduction must not have been relied on in the issuance of a previous nonattainment or prevention of significant deterioration permit.

(22) Plant-wide applicability limit--An emission limitation expressed, in tons per year, for a pollutant at a major stationary source, that is enforceable and established in a plant-wide applicability limit permit under §116.186 of this title (relating to General and Special Conditions).

(23) Plant-wide applicability limit effective date--The date of issuance of the plant-wide applicability limit permit. The plant-wide applicability limit effective date for a plant-wide applicability limit established in an existing flexible permit is the date that the flexible permit was issued.

(24) Plant-wide applicability limit major modification--Any physical change in, or change in the method of operation of the plant-wide applicability limit source that causes it to emit the plant-wide applicability limit pollutant at a level equal to or greater than the plant-wide applicability limit.

(25) Plant-wide applicability limit permit--The new source review permit that establishes the plant- wide applicability limit.

(26) Plant-wide applicability limit pollutant--The pollutant for which a plant-wide applicability limit is established at a major stationary source.

(27) Potential to emit--The maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or enforceable operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, may be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions, as defined in 40 Code of Federal Regulations §51.165(a)(1)(viii), do not count in determining the potential to emit for a stationary source.

(28) Project net--The sum of the following: the project emissions increase, minus any sourcewide creditable emission decreases proposed at the source between the date of application for the modification and the date the resultant modification begins emitting. Baseline actual emissions shall be used to determine emissions

increases and decreases. Increases and decreases must meet the creditability criteria listed under the definition of net emissions increase in this section.

(29) Projected actual emissions--The maximum annual rate, in tons per year, at which an existing facility is projected to emit a federally regulated new source review pollutant in any rolling 12-month period during the five years following the date the facility resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the facility's design capacity or its potential to emit that federally regulated new source review pollutant. In determining the projected actual emissions, the owner or operator of the major stationary source shall include fugitive emissions to the extent quantifiable and shall consider all relevant information, including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved state implementation plan.

(30) Project emissions increase--The sum of emissions increases for each modified or affected facility determined using the following methods:

(A) for existing facilities, the difference between the projected actual emissions and the baseline actual emissions. In calculating any increase in emissions that results from the project, that portion of the facility's emissions following the project that the facility could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth may be excluded from the project emission increase. The potential to emit from the facility following completion of the project may be used in lieu of the projected actual emission rate; and

(B) for new facilities, the difference between the potential to emit from the facility following completion of the project and the baseline actual emissions.

(31) Replacement facility--A facility that satisfies the following criteria:

(A) the facility is a reconstructed unit within the meaning of 40 Code of Federal Regulations §60.15(b)(1), or the facility replaces an existing facility;

(B) the facility is identical to or functionally equivalent to the replaced facility;

(C) the replacement does not alter the basic design parameters of the process unit;

(D) the replaced facility is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable. If the replaced facility is brought back into operation, it shall constitute a new facility. No creditable emission reductions shall be generated from shutting down the existing facility that is replaced. A replacement facility is considered an existing facility for the purpose of determining federal new source review applicability.

(32) Secondary emissions--Emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the source or modification itself. Secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions include emissions from any off-site support facility that would not be constructed or increase its emissions, except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source such as emissions from the tail pipe of a motor vehicle, from a train, or from a vessel.

(33) Significant facility--A facility that emits or has the potential to emit a plant-wide applicability limit (PAL) pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant.

(34) Small facility--A facility that emits or has the potential to emit the plant-wide applicability limit (PAL) pollutant in an amount less than the significant level for that PAL pollutant.

(35) Stationary source--Any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under 42 United States Code, §§7401 *et seq*.

(36) Temporary clean coal technology demonstration project--A clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 1. PERMIT APPLICATION

30 TAC §116.121

STATUTORY AUTHORITY

The new section is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new section is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning

Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0513, Permit Conditions, which allows the commission to establish and enforce permit conditions consistent with the TCAA; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and FCAA, 42 USC, §§7401 *et seq*., which requires permits for construction and operation of new or modified major stationary sources.

The new section implements THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, 382.513, and 382.0518; and FCAA, 42 USC, §§7401 *et seq*.

§116.121. Actual to Projected Actual and Emissions Exclusion Test for Emissions Increases.

(a) If projected actual emissions are used or emissions are excluded from the emission increase resulting from the project, the owner or operator shall document and maintain a record of the following information before beginning construction, and this information must be provided as part of the notification, certification, registration, or application submitted to the executive director to claim or apply for state new source review authorization for the project. If the emissions unit is an existing electric utility steam generating unit, the owner or operator shall provide a copy of this information to the executive director before beginning actual construction:

(1) a description of the project;

(2) identification of the facilities of which emissions of a federally regulated new source review pollutant could be affected by the project; and

(3) a description of the applicability test used to determine that the project is not a major modification for any pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded from the project emissions increase and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(b) If projected actual emissions are used to determine the project emission increase at a facility, the owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project at that facility and calculate and maintain a record of the annual emissions from that facility, in tons per year, on a calendar year basis for:

(1) a period of five years following resumption of regular operations after the change; or

(2) a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at that facility.

(c) If the facility is an electric utility steam generating unit, the owner or operator shall submit a report to the executive director within 60 days after the end of each calendar year of which records must be maintained documenting the unit's annual emissions during the calendar year that preceded submission of the report.

(d) If the facility is not an electric utility steam generating unit, the owner or operator shall submit a report to the executive director if the annual emissions from the project exceed the baseline actual emissions by a significant amount for that pollutant, and the emissions exceed the preconstruction projection for any facility. The report shall be submitted to the executive director within 60 days after the end of each calendar year. The report shall contain:

(1) the name, address, and telephone number of the major stationary source; and

(2) the calculated actual annual emissions.

(e) The owner or operator of the facility shall make the information required to be documented and maintained by this section available for review upon request for inspection by the executive director, local air pollution control program, and the general public.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 5. NONATTAINMENT REVIEW PERMITS

30 TAC §116.150, §116.151

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0513, Permit Conditions, which allows the commission to establish and enforce permit conditions consistent with the TCAA; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and FCAA, 42 USC, §§7401 *et seq*., which requires permits for construction and operation of new or modified major stationary sources.

The amendments implement THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, 382.513, and 382.0518; and FCAA, 42 USC, §§7401 *et seq*.

§116.150. New Major Source or Major Modification in Ozone Nonattainment Areas.

(a) This section applies to all new source review authorizations for new construction or modification of facilities as follows:

(1) for all applications for facilities that will be located in any area designated as nonattainment for ozone under 42 United States Code (USC), §§7407 *et seq*. on the effective date of this section, the issuance date of the authorization; and

(2) for all applications for facilities that will be located in counties for which nonattainment designation for ozone under 42 USC §§7407 *et seq*. becomes effective after the effective date of this section, the date the application is administratively complete.

(b) The owner or operator of a proposed new major stationary source, as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) of volatile organic compound (VOC) emissions or nitrogen oxides (NO_x) emissions, or the owner or operator of an existing stationary source of VOC or NO_x emissions that will undergo a major modification, as defined in §116.12 of this title with respect to VOC or NO_x, shall meet the requirements of subsection (e)(1) - (4) of this section, except as provided in subsection (f) of this section. Table I, located in the definition of major modification in §116.12 of this title, specifies the various classifications of nonattainment along with the associated emission levels that designate a major stationary source and significant level for those classifications.

(c) Except as noted in subsection (f) of this section regarding NO_x, the *de minimis* threshold test (netting) is required for all modifications to existing major sources of VOC or NO_x, unless at least one of the following conditions are met:

(1) the proposed emissions increases associated with a project, without regard to decreases, is less than five tons per year (tpy) of the individual nonattainment pollutant in areas classified under Federal Clean Air Act (FCAA), Title I, Part D, Subpart 2 (42 USC, §7511) classified as Serious or Severe;

(2) the proposed emissions increases associated with a project, without regard to decreases, is less than 40 tpy of the individual nonattainment pollutant in areas classified under FCAA, Title I, Part D, Subpart 1 (42 USC, §7502) and for those under FCAA, Title I, Part D, Subpart 2 (42 USC, §7511) classified as Marginal or Moderate; or

(3) the project emissions increases are less than the significant level stated in Table I located in the definition of major modification in §116.12 of this title and when coupled with project actual emissions decreases for the same pollutant, summed as the project net, are less than or equal to zero tpy.

(d) For the Houston-Galveston-Brazoria, Dallas-Fort Worth, and Beaumont-Port Arthur eight-hour ozone nonattainment areas, if the United States Environmental Protection Agency promulgates rules requiring new source review permit applications in these areas to be evaluated for nonattainment new source review according to that area's one-hour standard classification, except as noted in subsection (b) of this section regarding NO_x, the *de minimis* threshold test (netting) is required for all modifications to existing major sources of VOC or NO_x in that area, unless at least one of the following conditions is met:

(1) the proposed emissions increases associated with a project, without regard to decreases, is less than five tpy of the individual nonattainment pollutant; or

(2) the project emissions increases are less than the significant level stated in Table I located in the definition of major modification in §116.12 of this title and when coupled with project actual emissions decreases for the same pollutant, summed as the project net, are less than or equal to zero tpy.

(e) In applying the *de minimis* threshold test, if the net emissions increases are greater than the significant levels stated in Table I located in the definition of major modification in §116.12 of this title, the following requirements apply.

(1) The proposed facility shall comply with the lowest achievable emission rate (LAER) as defined in §116.12 of this title for the nonattainment pollutants for which the facility is a new major source or major modification except as provided in paragraph (3)(B) of this subsection and except for existing major stationary sources that have a potential to emit (PTE) of less than 100 tpy of the applicable nonattainment pollutant. For these sources, best available control technology (BACT) can be substituted for LAER. LAER shall otherwise be applied to each new facility and to each existing facility at which the net emissions increase will occur as a result of a physical change or change in method of operation of the unit.

(2) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state must be in compliance or on a schedule for compliance with all applicable state and federal emission limitations and standards.

(3) At the time the new or modified facility or facilities commence operation, the emissions increases from the new or modified facility or facilities must be offset. The proposed facility shall use the offset ratio for the appropriate nonattainment classification as defined in §116.12 of this title and shown in Table I located in the definition of major modification in §116.12 of this title. Internal offsets that are generated at the source and that otherwise meet all creditability criteria can be applied as follows.

(A) Major stationary sources with a PTE of less than 100 tpy of an applicable nonattainment pollutant are not required to undergo nonattainment new source review under this section, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1.

(B) Major stationary sources with a PTE of greater than or equal to 100 tpy of an applicable nonattainment pollutant can substitute BACT for LAER, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1. Internal offsets used in this manner can also be applied to satisfy the offset requirement.

(4) In accordance with the FCAA, the permit application must contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source. The analysis must demonstrate that the benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

(f) For sources located in the El Paso ozone nonattainment area as defined in §101.1 of this title (relating to Definitions), the requirements of this section do not apply to NO_x emissions.

§116.151. New Major Source or Major Modification in Nonattainment Area Other Than Ozone.

(a) This section applies to applications for new construction or modification of facilities located in a designated nonattainment area for an air contaminant other than ozone. The owner or operator of a proposed new or modified facility that will be a new major stationary source for that nonattainment air contaminant, or the owner or operator of an existing major stationary source that will undergo a major modification with respect to that nonattainment air contaminant, shall meet the additional requirements of subsection (c)(1) - (4) of this section.

Table I located in the definition of major modification in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) specifies the various classifications of nonattainment along with the associated emission levels that designate a major stationary source.

(b) The *de minimis* threshold test (netting) is required for all modifications to existing major sources of federally regulated new source review pollutants, unless the proposed emissions increases associated with a project, without regard to decreases, are less than the major modification threshold for the pollutant identified in Table I located in the definition of major modification in §116.12 of this title.

(c) In applying the *de minimis* threshold test, if the net emissions increases are greater than the major modification levels stated in Table I located in the definition of major modification in §116.12 of this title, the following requirements apply.

(1) The proposed facility shall comply with the lowest achievable emission rate (LAER) as defined in §116.12 of this title for the nonattainment pollutants for which the facility is a new major source or major modification. LAER shall be applied to each new facility and to each existing facility at which the net emissions increase will occur as a result of a physical change or change in method of operation of the unit.

(2) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state shall be in compliance or on a schedule for compliance with all applicable state and federal emission limits and standards.

(3) At the time the new or modified facility or facilities commence operation, the emission increases from the new or modified facility or facilities shall be offset. The proposed facility shall use the offset ratio for the appropriate nonattainment classification as defined in §116.12 of this title and shown in Table I located in the definition of major modification in §116.12 of this title.

(4) In accordance with the Federal Clean Air Act, the permit application shall contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source. The analysis shall demonstrate that the benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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DIVISION 6. PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

30 TAC §116.160

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0513, Permit Conditions, which allows the commission to establish and enforce permit conditions consistent with the TCAA; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and FCAA, 42 USC, §§7401 *et seq*., which requires permits for construction and operation of new or modified major stationary sources.

The amendment implements THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, 382.513, and 382.0518; and FCAA, 42 USC, §§7401 *et seq*.

§116.160. Prevention of Significant Deterioration Requirements.

(a) Each proposed new major source or major modification in an attainment or unclassifiable area shall comply with the requirements of this section. The owner or operator of a proposed new or modified facility that will be a new major stationary source for the prevention of significant deterioration air contaminant shall meet the additional requirements of subsection (c)(1) - (4) of this section.

(b) The *de minimis* threshold test (netting) is required for all modifications to existing major sources of federally regulated new source review pollutants, unless the proposed emissions increases associated with a project, without regard to decreases, are less than major modification thresholds for the pollutant identified in 40 Code of Federal Regulations (CFR) §52.21(b)(23).

(c) In applying the *de minimis* threshold test (netting), if the net emissions increases are greater than the major modification levels for the pollutant identified in 40 CFR 52.21(b)(23), the following requirements apply.

(1) In addition to those definitions in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) the following definitions from prevention of significant deterioration of air quality regulations promulgated by the United States Environmental Protection Agency (EPA) in 40 CFR §52.21 and the definitions for protection of visibility and promulgated in 40 CFR §51.301 as amended July 1, 1999, are incorporated by reference:

(A) 40 CFR §52.21(b)(13) - (15), concerning baseline concentrations, dates, and areas;

(B) 40 CFR §52.21(b)(19), concerning innovative control technology; and

(C) 40 CFR §52.21(b)(24) - (28), concerning federal land manager, terrain, and Indian reservations/governing bodies.

(2) The following requirements from prevention of significant deterioration of air quality regulations promulgated by the EPA in 40 CFR §52.21 are hereby incorporated by reference:

(A) 40 CFR §52.21(c) - (i), concerning increments, ambient air ceilings, restrictions on area classifications, exclusions from increment consumption, redesignation, stack heights, and exemptions;

(B) 40 CFR §52.21(k), concerning source impact analysis;

(C) 40 CFR §52.21(m) - (p), concerning air quality analysis, source information, additional impact analysis, and sources impacting federal Class I areas; and

(D) 40 CFR §52.21(v), concerning innovative technology.

(3) The term "facility" shall replace the words "emissions unit" in the referenced sections of the CFR.

(4) The term "executive director" shall replace the word "administrator" in the referenced sections of the CFR except in 40 CFR §52.21(g) and (v).

(d) All estimates of ambient concentrations required under this subsection shall be based on the applicable air quality models and modeling procedures specified in the EPA Guideline on Air Quality Models, as amended, or models and modeling procedures currently approved by the EPA for use in the state program, and other specific provisions made in the prevention of significant deterioration state implementation plan. If the air quality impact model approved by the EPA or specified in the guideline is inappropriate, the model may be modified or another model substituted on a case-by-case basis, or a generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval of the administrator of the EPA.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. HAZARDOUS AIR POLLUTANTS: REGULATIONS GOVERNING CONSTRUCTED OR RECONSTRUCTED MAJOR SOURCES (FCAA, §112(g), 40 CFR PART 63)

30 TAC §§116.180 - 116.183

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The repeals are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0513, Permit Conditions, which allows the commission to establish and enforce permit conditions consistent with the TCAA; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and FCAA, 42 USC, §§7401 *et seq*., which requires permits for construction and operation of new or modified major stationary sources.

The repeals implement THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, 382.513, and 382.0518; and FCAA, 42 USC, §§7401 *et seq*.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. PLANT-WIDE APPLICABILITY LIMITS

DIVISION 1. PLANT-WIDE APPLICABILITY LIMITS

30 TAC §§116.180, 116.182, 116.184, 116.186, 116.188, 116.190, 116.192, 116.194, 116.196, 116.198

STATUTORY AUTHORITY

The new sections are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new

sections are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0513, Permit Conditions, which allows the commission to establish and enforce permit conditions consistent with the TCAA; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and FCAA, 42 USC, §§7401 *et seq*., which requires permits for construction and operation of new or modified major stationary sources.

The new sections implement THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, 382.513, and 382.0518; and FCAA, 42 USC, §§7401 *et seq*.

§116.180. Applicability.

(a) The following requirements apply to a plant-wide applicability limit (PAL) permit.

(1) Only one PAL may be issued for each pollutant at an account site.

(2) A PAL permit may include more than one PAL.

(3) A PAL permit may not cover facilities at more than one source.

(4) A PAL permit may be consolidated with a new source review permit at the source.

(b) The new owner of a major stationary source shall comply with §116.110(e) of this title (relating to Applicability), provided that all facilities covered by a PAL permit change ownership at the same time and to the same person, or both the new owner and existing permit holder must obtain a PAL permit alteration allocating the emission prior to the transfer of the permit by the commission. After the sale of a facility, or facilities, but prior to the transfer of a permit requiring a permit alteration, the original PAL permit holder remains responsible for ensuring compliance with the existing PAL permit and all rules and regulations of the commission.

(c) The owner of the facility, group of facilities, or account or the operator of the facility, group of facilities, or account that is authorized to act for the owner is responsible for complying with this section, except as provided by subsection (b) of this section.

§116.182. Plant-wide Applicability Limit Permit Application.

Any application for a new plant-wide applicability limit (PAL) permit or PAL permit amendment must be completed and signed by an authorized representative. In order to be granted a PAL permit or PAL permit amendment, the owner or operator of the proposed facility shall submit information to the commission that demonstrates that all of the following information is submitted:

(1) a list of all facilities, including their registration or permit number to be included in the PAL, their potential to emit, and the expected maximum capacity. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit;

(2) calculations of the baseline actual emissions with supporting documentation;

(3) the calculation procedures that the permit holder proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month; and

(4) the monitoring and recordkeeping proposed satisfy the requirements of §116.186 of this title (relating to General and Special Conditions) for each PAL.

§116.186. General and Special Conditions.

(a) The plant-wide applicability limit (PAL) will impose an annual emission limitation in tons per year, that is enforceable for all facilities included in the PAL. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall demonstrate that the sum of the monthly emissions from each facility under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall demonstrate that the sum of the preceding monthly emissions from the PAL effective date for each facility under the PAL is less than the PAL. Each PAL must include emissions of only one pollutant. The PAL must include all emissions, including fugitive emissions, to the extent quantifiable, from all facilities included in the PAL that emit or have the potential to emit the PAL pollutant.

(b) The following general conditions are applicable to every PAL permit.

(1) Applicability. This section does not authorize any facility to emit air pollutants but establishes an annual emissions level below which new and modified facilities will not be subject to federal new source review for that pollutant.

(2) Sampling requirements. If sampling of stacks or process vents is required, the PAL permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the appropriate regional office of the commission. The PAL permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(3) Equivalency of methods. The permit holder shall demonstrate the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the PAL permit. Alternative methods must be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the permit.

(4) Recordkeeping and reporting.

(A) A copy of the PAL permit along with information and data sufficient to demonstrate continuous compliance with the emission caps contained in the PAL permit must be maintained in a file at the plant site and made available at the request of personnel from the commission or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information must be maintained at the nearest staffed location within Texas specified by the permit holder in the permit application. This information must include, but is not limited to, emission cap and

individual emission limitation calculations based on a 12-month rolling basis and production records and operating hours. Additional recordkeeping requirements may be specified in special conditions attached to the PAL permit.

(B) The owner or operator shall retain a copy of the PAL permit application and any applications for revisions to the PAL, each annual certification of compliance under §122.146 of this title (relating to Compliance Certification Terms and Conditions), and the data relied on in certifying the compliance for the duration of the PAL plus five years.

(C) A semiannual report shall be submitted to the executive director within 30 days of the end of each reporting period that contains:

(i) the identification of owner and operator and the permit number;

(ii) total annual emissions (in tons per year) based on a 12-month rolling total for each month in the reporting period;

(iii) all data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions;

(iv) a list of any facility modified or added to the major stationary source during the preceding six-month period;

(v) the number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken. This may be satisfied by referencing the PAL permit number in the semiannual report for the site submitted under §122.145 of this title (relating to Reporting Terms and Conditions);

(vi) a notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit; and

(vii) a signed statement by the responsible official certifying the truth, accuracy, and completeness of the information provided in the report.

(D) The owner or operator shall submit the results of any revalidation test or method to the executive director within three months after completion of such test or method.

(5) Maintenance of emission control. The facilities covered by the PAL permit will not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations.

(6) Compliance with rules. Acceptance of a PAL permit by a permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules and orders of the commission issued in conformity with the Texas Clean Air Act and the conditions precedent to the granting of the permit. If more than one state or federal rule or PAL permit condition is applicable, the most stringent limit or condition will govern and be the standard by which compliance must be demonstrated. Acceptance includes consent to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the PAL permit.

(7) Effective period. A PAL is effective for ten years.

(8) Absence of monitoring data. A source owner or operator shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for a facility during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit special conditions.

(9) Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the executive director. Such testing must occur at least once every five years after issuance of the PAL.

(10) Renewal. If a PAL renewal application is submitted to the executive director in accordance with §116.196 of this title (relating to Renewal of a Plant-wide Applicability Limit Permit), the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a renewed PAL permit is issued by the executive director or the application is voided.

(c) Each PAL permit must include special conditions that satisfy the following requirements.

(1) The PAL monitoring system must accurately determine all emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such a system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(2) The PAL monitoring system must employ one or more of the general monitoring approaches meeting the minimum requirements as described in subparagraphs (A) - (D) of this paragraph.

(A) An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(i) provide a demonstrated means of validating the published content of the PAL pollutant that is contained in, or created by, all materials used in or at the facility;

(ii) assume that the facility emits all of the PAL pollutant that is contained in, or created by, any raw material or fuel used in or at the facility, if it cannot otherwise be accounted for in the process; and

(iii) where the vendor of a material or fuel that is used in or at the facility publishes a range of pollutant content from such material, the owner or operator shall use the highest value of the range to calculate the PAL pollutant emissions unless the executive director determines that there is site-specific data or a site-specific monitoring program to support another content within the range.

(B) An owner or operator using a continuous emission monitoring system (CEMS) to monitor PAL pollutant emissions shall meet the following requirements.

(i) The CEMS must comply with applicable performance specifications found in 40 Code of Federal Regulations Part 60, Appendix B.

(ii) The CEMS must sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

(C) An owner or operator using continuous parameter monitoring system (CPMS) or predictive emission monitoring system (PEMS) to monitor PAL pollutant emissions shall meet the following requirements.

(i) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the facility.

(ii) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes or at another less frequent interval approved by the executive director, while the facility is operating.

(D) An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements.

(i) All emission factors must be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development.

(ii) The facility must operate within the designated range of use for the emission factor, if applicable.

(iii) If technically practicable, the owner or operator of a significant facility that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the executive director determines that testing is not required.

(E) An alternative monitoring approach must meet the requirements in paragraph (1) of this subsection and be approved by the executive director.

(3) Where an owner or operator of a facility cannot demonstrate a correlation between a monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the facility, the executive director shall:

(A) establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(B) determine that operation of the facility during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

§116.188. Plant-wide Applicability Limit.

The plant-wide applicability limit (PAL) is the sum of the baseline actual emissions of the PAL pollutant for each existing facility at the source to be covered. The allowable emission rate may be used for facilities that did not exist in the baseline period. Baseline actual emissions from facilities that were permanently shut down after the baseline period must be subtracted from the baseline emissions rate.

(1) An amount equal to the applicable significant level for the PAL pollutant may be added to the baseline actual emissions when establishing the PAL.

(2) When establishing the PAL level for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing facilities. However, a different consecutive 24-month period may be used for each different PAL pollutant.

(3) The executive director shall specify a reduced PAL level(s) in the PAL permit, to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s).

§116.190. Federal Nonattainment and Prevention of Significant Deterioration Review.

(a) An increase in emissions from operational or physical changes at a facility covered by a plant-wide applicability limit (PAL) permit is insignificant, for the purposes of federal new source review under this subchapter, if the increase does not exceed the PAL.

(b) At no time are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets, unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(c) A physical or operational change not causing an exceedance of a PAL is not subject to federal restrictions on relaxing enforceable emission limitations to avoid new source review.

§116.192. Amendments and Alterations.

(a) Any increase in a plant-wide applicability limit (PAL) must be made through amendment. Amendment applications must also include the information identified in §116.182 of this title (relating to Plant-wide Applicability Limit Permit Application) for new and modified facilities contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL and are subject to the public notice requirements under §116.194 of this title (relating to Public Notice and Comment).

(1) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small facilities, plus the sum of the baseline actual emissions of the significant and major facilities assuming application of best available control technology (BACT) equivalent controls, plus the sum of the allowable emissions of the new or modified facilities exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major facility shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the facility is currently required to comply with a BACT or lowest achievable emission rate (LAER) requirement that was established within the preceding ten years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(2) The owner or operator shall obtain a federal new source review permit for all facilities contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL, regardless of the magnitude of the emissions increase. These facilities shall comply with any emissions requirements resulting from the major new source review process.

(3) The PAL permit shall require that the increased PAL level be effective on the day any emission unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(4) The new PAL shall be the sum of the allowable emissions for each modified or new facility, plus the sum of the baseline actual emissions of the significant and major emissions units after the application of BACT equivalent controls as identified in paragraph (1) of this subsection, plus the sum of the baseline actual emissions of the small emissions units.

(b) Changes to PAL permits that do not require the PAL to be increased must be completed through permit alteration. Unless allowed in the PAL permit special conditions, the permit holder shall submit an alteration request prior to start of construction for physical modifications to facilities or installation of new facilities under the PAL. Approval must be received from the executive director prior to start of operation of the facilities if the emissions from the new or modified facilities may exceed 100 tons per year.

§116.194. Public Notice and Comment.

Applications for initial issuance of plant-wide applicability limit permits under this division are subject only to §§39.401, 39.405, 39.407,

39.409, 39.411, 39.419, 39.420, and 39.601 - 39.605 of this title (relating to Purpose; General Notice Provisions; Mailing Lists; Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing; Text of Public Notice; Notice of Application and Preliminary Decision; Transmittal of the Executive Director's Response to Comments and Decision; Applicability; Mailed Notice; Newspaper Notice; Sign-Posting; and Notice to Affected Agencies, respectively), except that any reference to requests for reconsideration or contested case hearings in §39.409 or §39.411 of this title shall not apply. Nothing in this section exempts an applicant for a new source review permit from the requirements of Subchapter B of this chapter (relating to New Source Review Permits).

§116.196. Renewal of a Plant-wide Applicability Limit Permit.

(a) A stationary source owner or operator shall submit a timely application to the executive director to request renewal of a plant-wide applicability limit (PAL) permit. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. If the owner or operator of a stationary source submits a complete application to renew the PAL permit within this time period, then the permit will continue to be effective until the revised permit with the renewed PAL is issued or the PAL permit is voided.

(b) All PAL permits issued prior to the effective date of this section are subject to the renewal requirements under this section. These permits must be renewed by December 31, 2006, or within the time frame specified in subsection (a) of this section, whichever is later.

(c) The following information must be submitted with a PAL renewal application:

(1) a proposed PAL level;

(2) information as identified in §116.182(1) of this title (relating to Plant-wide Applicability Limit Permit Application); and

(3) any other information the owner or operator wants the executive director to consider in determining the appropriate level for renewing the PAL.

(d) The proposed PAL level and a written rationale for the proposed PAL level are subject to the public notice requirements in §116.194 of this title (relating to Public Notice and Comment). During such public review, any person may propose a PAL level for the source for consideration by the executive director.

(e) The renewed PAL shall not exceed the potential to emit for the source and shall not be set at a level higher than the current PAL, unless the PAL is being amended in accordance with §116.192(a) of this title (relating to Amendments and Alterations) concurrently with the renewal. The executive director may adjust the renewed PAL in accordance with the following. .

(1) If the emissions level calculated in accordance with §116.188 of this title (relating to Plant-wide Applicability Limit) is equal to or greater than 80% of the PAL level, the PAL may be renewed at the same level.

(2) If the emissions level calculated in accordance with §116.188 of this title is less than 80% of the PAL level, the executive director may set the PAL at a level that is determined to be more representative of the source's baseline actual emissions, or that is determined to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the executive director in written rationale.

(f) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the executive director has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or federal operating permit renewal, whichever occurs first.

§116.198. Expiration or Voidance.

(a) A plant-wide applicability limit (PAL) permit shall expire ten years after the date of issuance if the renewal application is not submitted in accordance with §116.196(a) of this title (relating to Renewal of a Plant-wide Applicability Limit Permit).

(b) Owners or operators of major stationary sources who decide not to renew their PAL will, within the time frame specified for PAL renewal applications in §116.196(a) of this title, submit a proposed allowable emission limitation for each facility (or each group of facilities, if such a distribution is more appropriate as decided by the executive director) by distributing the PAL allowable emissions for the major stationary source among each of the facilities that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, the distribution shall be made as if the PAL had been adjusted.

(c) The executive director shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each facility, or each group of facilities, as the executive director determines is appropriate. Each facility shall comply with the allowable emission limitation on a 12-month rolling basis. The executive director may approve the use of monitoring systems (source testing, emission factors, etc.) other than a continuous emission monitoring system, continuous emission rate monitoring system, predictive emission monitoring system, or continuous parameter monitoring system to demonstrate compliance with the allowable emission limitation.

(1) Until the executive director issues the revised permit incorporating allowable limits for each facility, or each group of facilities, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(2) Any physical change or change in the method of operation at the major stationary source will be subject to federal new source review requirements if the change meets the definition of major modification in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Definitions).

(3) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements that applied during the PAL effective period.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. HAZARDOUS AIR POLLUTANTS: REGULATIONS GOVERNING CONSTRUCTED OR RECONSTRUCTED MAJOR SOURCES (FCAA, §112(g), 40 CFR PART 63)

30 TAC §§116.400, 116.402, 116.404, 116.406

STATUTORY AUTHORITY

The new sections are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0513, Permit Conditions, which allows the commission to establish and enforce permit conditions consistent with the TCAA; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and FCAA, 42 USC, §§7401 *et seq*., which requires permits for construction and operation of new or modified major stationary sources.

The new sections implement THSC, §§382.002, 382.011, 382.012, 382.051, and 382.0518.

§116.400. Applicability.

(a) The provisions of this subchapter implement Federal Clean Air Act (FCAA), §112(g), Modifications, and 40 Code of Federal Regulations (CFR) Part 63, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources, Subpart B, Requirements for Control Technology, as amended December 27, 1996. Affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to this subchapter are those sources for which the United States Environmental Protection Agency has not promulgated a maximum available control technology (MACT) standard under 40 CFR Part 63. For purposes of this subchapter, the following terms apply.

(1) Construct a major source--As follows.

(A) To fabricate, erect, or install at any green field site a stationary source or group of stationary sources that are located within a contiguous area and under common control and that emit or have the potential to emit ten tons per year of any hazardous air pollutant (HAP) or 25 tons per year of any combination of HAPs;

(B) to fabricate, erect, or install at any developed site a new process or production unit that in and of itself emits or has the potential to emit ten tons per year of any HAP or 25 tons per year of any combination of HAPs, unless the process or production unit satisfies clauses (i) - (vi) of this subparagraph:

(i) all HAPs emitted by the process or production unit that would otherwise be controlled under the requirements of this subchapter will be controlled by emission control equipment that was previously installed at the same site as the process or production unit;

(ii) either of the following regarding control of HAP emissions:

(I) the executive director has determined within a period of five years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented best available control technology (BACT), lowest achievable emission rate (LAER) under 40 CFR Part 51 or Part 52, toxics-best available control technology (T-BACT), or MACT based on state air toxic rules for the category of pollutants that includes those HAPs to be emitted by the process or production unit; or

(II) the executive director determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other similar sources using a level of control equivalent to current BACT, LAER, T-BACT, or state air toxic rule MACT determination;

(iii) the executive director determines that the percent control efficiency for emissions of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(iv) the executive director has provided notice and an opportunity for public comment concerning the determination that criteria in clauses (i) - (iii) of this subparagraph apply and concerning the continued adequacy of any prior LAER, BACT, T-BACT, or state air toxic rule MACT determination;

(v) if any commenter has asserted that a prior LAER, BACT, T-BACT, or state air toxic rule MACT determination is no longer adequate, the executive director has determined that the level of control required by that prior determination remains adequate; and

(vi) any emission limitations, work practice requirements, or other terms and conditions upon which the determinations in clauses (i) - (v) of this subparagraph are predicated will be construed by the executive director as applicable requirements under FCAA, §504(a), and either have been incorporated into any existing permit issued under Chapter 122 of this title (relating to Federal Operating Permits) for the affected source (as defined in §116.15(1) of this title) or will be incorporated into such permit upon issuance.

(2) Reconstruct a major source--The replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit ten tons per year of any HAP or 25 tons per year of any combination of HAP, whenever:

(A) the fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable process or production unit; and

(B) it is technically and economically feasible for the reconstructed major source to meet the applicable MACT emission limitation for new sources established under this subchapter.

(b) The requirements of this subchapter apply to an owner or operator of an affected source (as defined in §116.15(1) of this title) that constructs or reconstructs, unless the affected source in question has been specifically regulated or exempted from regulation under a standard issued under FCAA, §112(d), (h), or (j) and incorporated in

another subpart of 40 CFR Part 63, or the owner or operator of such affected source has received all necessary air quality permits for such construction or reconstruction project.

(c) Affected sources (as defined in §116.15(1) of this title) subject to the requirements of this subchapter are not eligible to use a standard permit under Subchapter F of this chapter (relating to Standard Permits) unless the terms and conditions of the specific standard permit meet the requirements of this subchapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. EMERGENCY ORDERS

30 TAC §116.410

STATUTORY AUTHORITY

The repeal is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The repeal is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

The repeal implements THSC, §§382.002, 382.011, and 382.012.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. STANDARD PERMITS

30 TAC §116.610, §116.617

STATUTORY AUTHORITY

The amendment and new section are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment and new section are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382, and to issue a standard permit for similar facilities; §382.0512, concerning Modification of Existing Facility, which establishes a modification and its limits; §382.0513, Permit Conditions, which allows the commission to establish and enforce permit conditions consistent with the TCAA; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; and §382.05195, concerning Standard Permit, which authorizes the commission to issue a standard permit for new or existing similar facilities if the standard permit is enforceable, and the commission can adequately monitor compliance with the terms of the standard permit; and FCAA, 42 USC, §§7401 *et seq.*, which requires permits for construction and operation of new or modified major stationary sources.

The amendment and new section implement THSC, §§382.002, 382.011, 382.012, 382.051, 382.0512, 382.513, 382.0518, and 382.05195; and FCAA, 42 USC, §§7401 *et seq*.

§116.610. Applicability.

(a) Under the Texas Clean Air Act, §382.051, a project that meets the requirements for a standard permit listed in this subchapter or issued by the commission is hereby entitled to the standard permit, provided the following conditions listed in this section are met. For the purposes of this subchapter, project means the construction or modification of a facility or a group of facilities submitted under the same registration.

(1) Any project that results in a net increase in emissions of air contaminants from the project other than carbon dioxide, water, nitrogen, methane, ethane, hydrogen, oxygen, or those for which a national ambient air quality standard has been established must meet the emission limitations of §106.261 of this title (relating to Facilities (Emission Limitations), unless otherwise specified by a particular standard permit.

(2) Construction or operation of the project must be commenced prior to the effective date of a revision to this subchapter under which the project would no longer meet the requirements for a standard permit.

(3) The proposed project must comply with the applicable provisions of the Federal Clean Air Act (FCAA), §111 (concerning New Source Performance Standards) as listed under 40 Code of Federal Regulations (CFR) Part 60, promulgated by the United States Environmental Protection Agency (EPA).

(4) The proposed project must comply with the applicable provisions of FCAA, §112 (concerning Hazardous Air Pollutants) as listed under 40 CFR Part 61, promulgated by the EPA.

(5) The proposed project must comply with the applicable maximum achievable control technology standards as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR Part 63)).

(6) If subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) the proposed facility, group of facilities, or account must obtain allocations to operate.

(b) Any project that constitutes a new major stationary source or major modification as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) is subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter.

(c) Persons may not circumvent by artificial limitations the requirements of §116.110 of this title.

(d) Any project involving a proposed affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) shall comply with all applicable requirements under Subchapter E of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)). Affected sources subject to Subchapter E of this chapter may use a standard permit under this subchapter only if the terms and conditions of the specific standard permit meet the requirements of Subchapter E of this chapter.

§116.617. State Pollution Control Project Standard Permit.

(a) Scope and applicability.

(1) This standard permit applies to pollution control projects undertaken voluntarily or as required by any governmental standard, that reduce or maintain currently authorized emission rates for facilities authorized by a permit, standard permit, or permit by rule.

(2) The project may include:

(A) the installation or replacement of emissions control equipment;

(B) the implementation or change to control techniques; or

(C) the substitution of compounds used in manufacturing processes.

(3) This standard permit must not be used to authorize the installation of emission control equipment or the implementation of a control technique that:

(A) constitutes the complete replacement of an existing production facility or reconstruction of a production facility as defined in 40 Code of Federal Regulations §60.15(b)(1) and (c); or

(B) the executive director determines there are health effects concerns or the potential to exceed a national ambient air quality standard criteria pollutant or contaminant that results from an increase in emissions of any air contaminant until those concerns are addressed by the registrant to the satisfaction of the executive director; or

(C) returns a facility or group of facilities to compliance with an existing authorization or permit unless authorized by the executive director.

(4) Only new or modified pollution control projects must meet the conditions of this standard permit. All previous standard permit registrations under this section that were authorized prior to the effective date of this rule must include the increases and decreases in emissions resulting from those projects in any future netting calculation and all other conditions must be met upon the ten-year anniversary and renewal of the original registration, or until administratively incorporated into the facilities' permit, if applicable.

(b) General requirements.

(1) Any claim under this standard permit must comply with all applicable conditions of:

(A) §116.604(1) and (2) of this title (relating to Duration and Renewal of Registrations to Use Standard Permits);

(B) §116.605(d)(1) and (2) of this title (relating to Standard Permit Amendment and Revocation);

(C) §116.610 of this title (relating to Applicability);

(D) §116.611 of this title (relating to Registration to Use a Standard Permit);

(E) §116.614 of this title (relating to Standard Permit Fees); and

(F) §116.615 of this title (relating to General Conditions).

(2) Construction or implementation of the pollution control project must begin within 18 months of receiving written acceptance of the registration from the executive director, with one 18-month extension available, and must comply with §116.115(b)(2) and §116.120 of this title (relating to General and Special Conditions and Voiding of Permits). Any changes to allowable emission rates authorized by this section become effective when the project is complete and operation or implementation begins.

(3) The emissions limitations of §116.610(a)(1) of this title do not apply to this standard permit.

(4) Predictable maintenance, startup, and shutdown emissions directly associated with the pollution control projects must be included in the representations of the registration application.

(5) Any increases in actual or allowable emission rates or any increase in production capacity authorized by this section (including increases associated with recovering lost production capacity) must occur solely as a result of the project as represented in the registration application. Any increases of production associated with a pollution control project must not be utilized until an additional authorization is obtained. This paragraph is not intended to limit the owner or operator's ability to recover lost capacity caused by a derate, which may be recovered and used without any additional authorization.

(c) Replacement projects.

(1) The replacement of emissions control equipment or control technique under this standard permit is not limited to the method of control currently in place, provided that the control or technique is at least as effective as the current authorized method and all other requirements of this standard permit are met.

(2) The maintenance, startup, and shutdown emissions may be increased above currently authorized levels if the increase is necessary to implement the replacement project and maintenance, startup, and shutdown emissions were authorized for the existing control equipment or technique.

(3) Equipment installed under this section is subject to all applicable testing and recordkeeping requirements of the original control authorization. Alternate, equivalent monitoring, or records may be proposed by the applicant for review and approval of the executive director.

(d) Registration requirements.

(1) A registration must be submitted in accordance with the following.

(A) If there are no increases in authorized emissions of any air contaminant resulting from a replacement pollution control project, a registration must be submitted no later than 30 days after construction or implementation begins and the registration must be accompanied by a $900 fee.

(B) If a new control device or technique is authorized or if there are increases in authorized emissions of any air contaminant resulting from the pollution control project, a registration must be submitted no later than 30 days prior to construction or implementation. The registration must be accompanied by a $900 fee. Construction or implementation may begin only after:

(i) no written response has been received from the executive director within 30 calendar days of receipt by the Texas Commission on Environmental Quality (TCEQ); or

(ii) written acceptance of the pollution control project has been issued by the executive director.

(C) If there are any changes in representations to a previously authorized pollution control project standard permit for which there are no increases in authorized emissions of any air contaminant, a notification or letter must be submitted no later than 30 days after construction or implementation of the change begins. No fee applies and no response will be sent from the executive director.

(D) If there are any changes in representations to a previously authorized pollution control project standard permit that also increase authorized emissions of any air contaminant resulting from the pollution control project, a registration alteration must be submitted no later than 30 days prior to the start of construction or implementation of the change. The registration must be accompanied by a $450 fee, unless received within 180 days of the original registration approval. Construction or implementation may begin only after:

(i) no written response has been received from the executive director within 30 calendar days of receipt by the TCEQ; or

(ii) written acceptance of the pollution control project has been issued by the executive director.

(2) The registration must include the following:

(A) a description of process units affected by the project;

(B) a description of the project;

(C) identification of existing permits or registrations affected by the project;

(D) quantification and basis of increases and/or decreases associated with the project, including identification of affected existing or proposed emission points, all air contaminants, and hourly and annual emissions rates;

(E) a description of proposed monitoring and recordkeeping that will demonstrate that the project decreases or maintains emission rates as represented; and

(F) a description of how the standard permit will be administratively incorporated into the existing permit(s).

(e) Operational requirements. Upon installation of the pollution control project, the owner or operator shall comply with the requirements of paragraphs (1) and (2) of this subsection.

(1) General duty. The owner or operator must operate the pollution control project in a manner consistent with good industry and engineering practices and in such a way as to minimize emissions of collateral pollutants, within the physical configuration and operational standards usually associated with the emissions control device, strategy, or technique.

(2) Recordkeeping. The owner or operator must maintain copies on site of monitoring or other emission records to prove that the pollution control project is operated consistent with the requirements in paragraph (1) of this subsection, and the conditions of this standard permit.

(f) Incorporation of the standard permit into the facility authorization.

(1) Any new facilities or changes in method of control or technique authorized by this standard permit instead of a permit amendment under §116.110 of this title (relating to Applicability) at a previously permitted or standard permitted facility must be incorporated into that facility's permit when the permit is amended or renewed.

(2) All increases in previously authorized emissions, new facilities, or changes in method of control or technique authorized by this standard permit for facilities previously authorized by a permit by rule must comply with §106.4 of this title (relating to Requirements for Permitting by Rule), except §106.4(a)(1) of this title, and §106.8 of this title (relating to Recordkeeping).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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30 TAC §116.617

STATUTORY AUTHORITY

The repeal is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The repeal is

also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382.

The repeal implements THSC, §§382.002, 382.011, 382.012, and 382.051.

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SUBCHAPTER K. EMERGENCY ORDERS

30 TAC §116.1200

STATUTORY AUTHORITY

The new section is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; §5.515, Emergency Order Because of Catastrophe, which authorizes the commission to order immediate action necessitated by catastrophe; §5.516, Emergency order Under Section 401.056, Health and Safety Code, which authorizes the commission to issue an emergency order under Section 401.056, Health and Safety Code; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new section is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC.

The new section implements TWC, §5.515 and §5.516, and THSC, §§382.002, 382.011, 382.012, and 382.051.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 337. DRY CLEANER ENVIRONMENTAL RESPONSE

The Texas Commission on Environmental Quality (commission or TCEQ) adopts the amendments to §§337.3, 337.11, 337.13 - 337.15, 337.20, 337.22, 337.30, 337.31, 337.61, and 337.62 *without changes* to the proposed text as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6571). The adopted amendments will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of the adopted rules is to implement House Bill (HB) 2376 and Senate Bill (SB) 444, 79th Legislature, 2005. Both of these bills revise statutes relating to the dry cleaner environmental response program created by the 78th Legislature, 2003, and codified in Texas Health and Safety Code (THSC), Chapter 374. HB 2376 amends THSC, §§374.001, 374.004, 374.051 - 374.054, 374.101 - 374.104, 374.151, 374.154, 374.202, 374.203, and 374.251 - 374.253 and Texas Water Code (TWC), §7.0525, and repeals THSC, §§374.001(1), 374.052(c), 374.105, 374.156, and 374.201. HB 2376 includes provisions regarding secondary containment requirements for chlorinated dry cleaning solvent; amended annual registration fees and assessment calculations; the involvement of the Texas comptroller of public accounts to verify certain registration information; an extended deadline for the designation of nonparticipating dry cleaning facilities and drop stations; and solvent distributors retaining 1% of the fees collected if the distributor pays the fees on time to the commission.

SB 444 amends THSC, §374.104. SB 444 extends the deadline for the designation of nonparticipating dry cleaning facilities and drop stations and allows registration fee credits for the owners of certain dry cleaning facilities that do not participate in the Dry Cleaning Facility Release Fund. The bill also specifies that for changes mandated by this bill, the commission shall adopt rules by February 28, 2006.

SECTION BY SECTION DISCUSSION

The commission adopts amendments to Chapter 337, Dry Cleaner Environmental Response, to establish the procedures to administer and enforce HB 2376 and SB 444.

Throughout this rulemaking package, minor administrative changes are made to be consistent with Texas Register requirements and other agency rules for clarity and for better readability.

The commission adopts an amendment to §337.3, Definitions, which adds the language "a dry cleaning unit" to the definition of dry cleaning machine. The additional phrase is necessary to further clarify the meaning of the term, reduce confusion, and to match the usage in THSC, Chapter 374. The language "as that subsection existed from September 1, 2003, until August 31, 2005" has been added to the definition of participating non-perchloroethylene user registration certificate. This certificate was issued under THSC, §374.103(b)(1), which was deleted from the statute by HB 2376.

The commission adopts an amendment to §337.11, Dry Cleaner Registration Certificates, which includes the procedures related to registration certificates for dry cleaning facilities and dry cleaning drop stations, including obtaining, renewing, and displaying a certificate, as well as the process for revocation or denial of a certificate. Dry cleaner registration certificates are necessary to receive delivery of dry cleaning solvents. This section clarifies that a registration must be administratively complete before a certificate will be issued and further defines an administratively complete registration. It further clarifies that upon determination that a submitted registration is administratively complete, the executive director will issue a registration certificate as long as there is no reason to deny the registration certificate under §337.11(f). The redundant opening phrase, "Issuance of a registration certificate." has been stricken from §337.11(c). "Chapter 37 of this title (relating to Financial Assurance)" has been removed from §337.11(c) in accordance with HB 2376, §19, repealing THSC, §374.105. Commission review was added to enable the owner to appeal the executive director's determination to revoke or deny a certificate. The appeal must be in writing and filed with the commission's Office of the Chief Clerk no later than 23 days after the date the agency mails the determination to revoke or deny a certificate. This section was added due to changes to THSC, §374.251, required by HB 2376.

The commission adopts an amendment to §337.13, Distributor Registration Certificate, which includes the procedures related to registration certificates for distributors, including obtaining and displaying a certificate, as well as the process for revocation or denial of a certificate. The certificate is necessary for the delivery of dry cleaning solvents and makes it easier for a dry cleaner to determine if a distributor is registered with the agency. This is important because, under these rules, dry cleaners are prohibited from purchasing solvent from a distributor that is not registered with the agency. A commission review was added to enable the distributor to appeal the executive director's determination to revoke or deny a certificate. The appeal must be in writing and filed with the commission's Office of the Chief Clerk no later than 23 days after the date the agency mails the determination to revoke or deny a certificate. This section was added due to changes to THSC, §374.251, required by HB 2376.

The commission adopts an amendment to §337.14, Registration Fees, which includes the procedures and requirements for owners of operating dry cleaning facilities and dry cleaning drop stations to pay the registration fees required by THSC, §374.102. Because the registration fee structure changes effective September 1, 2005, separate identification for registration fees payable for operations conducted prior to September 1, 2005, and fees to be assessed after September 1, 2005, has been added to the rule. Subsequent paragraphs have been renumbered accordingly.

The commission adopts an amendment to §337.15, Solvent Fees, which includes the procedures and requirements for payment and collection of the dry cleaning solvent fees required by THSC, §374.103. This section includes the entities exempt from paying the solvent fees, reporting requirements for distributors, specifications on payment of collected fees to the agency, and provisions governing late payments. A dry cleaning drop station is a retail commercial establishment, the primary business of which is to act as a collection point for the drop-off and pickup of garments or other fabrics that are sent to a dry cleaning facility for processing. Exemptions from solvent fees have been extended to include drop stations for which the owner has submitted the appropriate affidavit to the executive director and received a non-perchloroethylene user registration certificate. Exemptions from solvent fees have been clarified to specify an owner to whom the executive director has issued a participating non-perchloroethylene user registration certificate. A provision under THSC, §374.103(a)(1) allows the distributor of solvents to withhold 1% of the amount of the fee imposed by §337.15(a) for the distributor's administrative expenses if the distributor pays the remaining amount to the commission no later than the date prescribed by the commission. The distributor must submit a report specifying the total amount of fees collected by the distributor for the period, the amount due to the distributor under the provisions, if any, and the total amount to be remitted to the commission. The actual due dates for reports and fees have been itemized: the report and payment for the period of September 1 - November 30 must be received by the agency by December 20; the report and payment for the period of December 1 - February 28/29 must be received by the agency by March 20; the report and payment for the period of March 1 - May 31 must be received by the agency by June 20; and the report and payment for the period of June 1 - August 31 must be received by the agency by September 20. This rule also specifies that the fees collected by the distributor are held in a trust for the agency and are not the property of the distributor and are not to be used by the distributor until the date that the distributor remits the amount due to the commission. Distributors that fail to pay their quarterly solvent fees when due forfeit any right or claim to withhold a portion of collected fees for administrative expenses. Subsequent paragraphs have been renumbered accordingly.

The commission adopts an amendment to §337.20, Performance Standards, which includes the performance standards that apply to dry cleaning facilities, including the dates by which owners must be in compliance. Section 337.20(a) has been amended to clarify that performance standards apply to all dry cleaning facilities, including those that have a nonparticipating non-perchloroethylene user certificate. In addition, the words "and dry cleaning drop stations" have been removed from §337.20(a) because performance standards apply only to dry cleaning facilities, not drop stations. Section 337.20(b), compliance deadlines, has been added to specify that required compliance extends to owners of all operating dry cleaning facilities unless otherwise specifically stated. It further states that owners of all new dry cleaning facilities shall construct and operate facilities in compliance with this section. Subsequent paragraphs have been renumbered accordingly. Section 337.20(e)(2) has been inserted to include the procedures and requirements for compliance deadlines and specifies the exemption. The exemption includes dry cleaning facilities in operation on or before January 1, 2004, that have gross annual receipts of $150,000 or less. These facilities have until January 1, 2015, to comply. Further stated, if before January 1, 2015, a dry cleaning facility begins to have gross annual receipts greater than $150,000, the dry cleaning facility must meet the

requirements of compliance deadlines by August 1 of the year following the time the facility exceeded $150,000 in annual gross receipts. Subsequent paragraphs have been renumbered accordingly. These amendments are necessary to comply with THSC, Chapter 374.

The commission adopts an amendment to §337.22, Variances and Alternative Procedures, which includes the procedures for obtaining a variance from the requirements of the dry cleaning rules in this subchapter, as well as recordkeeping requirements related to a variance that is granted. Having the option of requesting a variance to the performance standards provides flexibility in applicable situations while still addressing environmental concerns. The term "the owner of a dry cleaning facility" has been stricken and replaced with "a person" in §337.22(a) and the term "owner" has been stricken and replaced with "person requesting the variance" in §337.22(b) to allow flexibility in the approval of emerging technologies. Section 337.22(c) has been changed to clarify that any request to the executive director for approval of a variance must be in writing, signed and dated by the person requesting the variance, and accompanied by specified documentation. The substance of the subsection has not been impacted, but reorganized for clarity of reading.

The commission adopts an amendment to §337.30, Prioritization of Sites, which includes the provisions relating to the prioritization of dry cleaning sites that require corrective action. A site will only be eligible for prioritization if it has been ranked with the dry cleaning facility ranking system. Under THSC, §374.051(b)(3), criteria for prioritization is required to be in the rule. The term "facility" has been replaced with "site" for consistency and clarity in §337.30(a)(1) and (b)(1).

The commission adopts an amendment to §337.31, Ranking of Sites, which includes the procedures for the ranking of dry cleaning facilities. The ranking system is a methodology designed to determine a numerical score for a facility based on various factors that may impact human health or the environment. This section includes the information required to be contained in the application for ranking package as well as who may apply for a site to be ranked under THSC, §374.154(b). The term "facility" has been replaced with "site" in §337.31(a) and subsection (a)(1) and the term "facilities" has been replaced with "sites" in §337.31(a)(2) for consistency and clarity.

The commission adopts the new title of Subchapter G, Non-Perchloroethylene Users, Facilities, and Drop Stations, in accordance with HB 2376 by adding drop stations.

The commission adopts an amendment to §337.61, Participating Non-Perchloroethylene User Registration Certificate, which states that to obtain this certificate the owner must meet requirements of THSC, §374.104 and swear in an affidavit approved by the executive director. After September 1, 2005, a participating non-perchloroethylene registration certificate will not be available unless the owner has already obtained this certificate. For clarity, the subsection stating requirements of the affidavit is proposed to be reformatted, removing §337.61(b) altogether. Section 337.61(1) specifies that the owner swears that perchloroethylene has never been used or that the owner allowed the use of perchloroethylene at any dry cleaning facility or drop station in the state. Section 337.61(2) specifies that perchloroethylene must never have been used at the location to which the nonparticipating non-perchloroethylene user registration certificate would apply. Section 337.61(3) specifies that the owner will not now or ever use perchloroethylene at the location to which the nonparticipating non-perchloroethylene user registration certificate would apply. Section 337.61(4) specifies that the owner was the owner of the dry cleaning facility or dry cleaning drop station on January 1, 2004, and was eligible to file the option not to participate on or before January 1, 2004, and inadvertently failed to file before that date. The commission also adopts the new title of §337.61, Nonparticipating Non-Perchloroethylene User Registration Certificate. These amendments are necessary to comply with THSC, Chapter 374.

The commission adopts an amendment to §337.62, Nonparticipating Non-Perchloroethylene Facilities, which includes requirements that apply to such a facility, including disclosure requirements for any sale of the facility. This section is amended to include the requirements set forth in THSC, §374.104 by adding "or drop station" after "facility" throughout the section and removing "the owner of the" from §337.62(a)(1) so that the section now states, "the dry cleaning facility or drop station is not eligible for any expenditures of money from the Dry Cleaning Facility Release Fund." The commission adopts the new title of §337.62, Nonparticipating Non-Perchloroethylene Facilities and Drop Stations.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Although the intent of the adopted rules is to protect the environment or reduce risks to human health from environmental exposure, the adopted rules will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Furthermore, even if the adopted rules did meet the definition of a major environmental rule, Texas Government Code, §2001.0225 only applies to a major environmental rule if the result of the rule is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. These adopted rules do not meet any of the four applicability requirements and thus are not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225 even if they did meet the definition of a major environmental law. Specifically, the adopted rules are required by state law, are not adopted solely under the general powers of the agency, and do not exceed an express requirement of state law, federal law, or a delegation agreement or contract between the state and an agency or representative of the federal government.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and does not impose a greater burden

than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13).

The adopted rules implement HB 2376 and SB 444, which amend THSC, Chapter 374. THSC, Chapter 374 addresses the environmental regulation and remediation program for dry cleaning facilities and dry cleaning drop stations. Under the program, certain dry cleaners and drop stations pay registration and solvent fees into a fund that is then used by the agency to investigate and clean up eligible contaminated dry cleaning sites. Additionally, the legislation and adopted rules contain performance standards and waste handling requirements to alleviate the possibility of future contamination from dry cleaning facilities. Such contamination is a real and substantial threat to public health and safety. The adopted rules significantly advance a health and safety purpose by providing the framework within which the agency will collect the funds for corrective action and use those funds to address health and safety concerns at sites around the state. Furthermore, the adopted rules significantly advance a health and safety purpose by specifying performance standards and waste handling requirements to alleviate future health and safety issues resulting from dry cleaning facilities. The adopted rules are narrowly tailored to apply to only certain dry cleaning facilities, dry cleaning drop stations, and distributors and do not impose a greater burden than is necessary to achieve the health and safety purpose as previously stated.

Nevertheless, the commission further evaluated these adopted rules and performed an assessment of whether these rules constitute a takings under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to implement HB 2376 and SB 444 by setting forth: 1) procedures governing registration, certificates, and the collection of fees; 2) performance standards; 3) requirements for the removal of dry cleaning solvents and waste; 4) procedures relating to the prioritization and ranking of sites; and 5) provisions relating to non-perchloroethylene users and facilities.

Promulgation and enforcement of the adopted rules is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted rules do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), restrict, or limit the owner's rights to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the adopted rules. The adopted rules implement HB 2376 and SB 444 by providing the framework within which the agency will regulate and remediate dry cleaning facilities and dry cleaning drop stations. There are no burdens imposed on private real property from these adopted rules and the benefits to society are the adopted rules' specific procedures and requirements for a program that addresses dry cleaning contamination and seeks to prevent future contamination.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission prepared a consistency determination for the rules under 31 TAC §505.22 and found that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to the rulemaking is governing emissions of air pollutants to protect and enhance air quality in the coastal area so as to protect coastal natural resource areas and promote the public health, safety, and welfare. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies. The amendments are required to comply with HB 2376 and SB 444 relating to the environmental regulation and remediation of dry cleaning facilities. The adopted rules amend annual registration fees assessment calculations; establish new compliance deadlines for performance standards for dry cleaning facilities; reference the necessity of comptroller verification that the owner is in good standing with the state and is reporting gross receipts accurately; clarify the designation of a nonparticipating status and establish new deadlines and fee credits for nonparticipating sites; expand on revocation or denial of a certificate; and clarify and establish procedures to administer and enforce the program.

PUBLIC COMMENT

A public hearing on the proposed rules was held in Austin, Texas, on November 8, 2005. The public comment period ended at 5:00 p.m. on November 14, 2005. No comments were received at the public hearing or during the 30-day comment period.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §337.3

STATUTORY AUTHORITY

The amendment is adopted under the authority granted to the commission by the 79th Legislature and THSC, Chapter 374. The amendment is also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the Solid Waste Disposal Act; THSC, §361.024, which authorizes the commission to adopt rules consistent with the Solid Waste Disposal Act and establish minimum standards for the management and control of solid waste; HB 2376, 79th Legislature; and SB 444, 79th Legislature.

The adopted amendment implements THSC, Chapter 374.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2006.

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Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
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Proposal publication date: October 14, 2005
For further information, please call: (512) 239-0177

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SUBCHAPTER B. REGISTRATION, CERTIFICATES, AND FEES

30 TAC §§337.11, 337.13 - 337.15

STATUTORY AUTHORITY

The amendments are adopted under the authority granted to the commission by the 79th Legislature and THSC, Chapter 374. The amendments are also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the Solid Waste Disposal Act; THSC, §361.024, which authorizes the commission to adopt rules consistent with the Solid Waste Disposal Act and establish minimum standards for the management and control of solid waste; HB 2376, 79th Legislature; and SB 444, 79th Legislature.

The adopted amendments implement THSC, Chapter 374.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. PERFORMANCE STANDARDS AND WASTE REMOVAL

30 TAC §337.20, §337.22

STATUTORY AUTHORITY

The amendments are adopted under the authority granted to the commission by the 79th Legislature and THSC, Chapter 374. The amendments are also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the Solid Waste Disposal Act; THSC, §361.024, which authorizes the commission to adopt rules consistent with the Solid Waste Disposal Act and establish minimum standards for the management and control of solid waste; HB 2376, 79th Legislature; and SB 444, 79th Legislature.

The adopted amendments implement THSC, Chapter 374.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. PRIORITIZATION AND RANKING

30 TAC §337.30, §337.31

STATUTORY AUTHORITY

The amendments are adopted under the authority granted to the commission by the 79th Legislature and THSC, Chapter 374. The amendments are also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the Solid Waste Disposal Act; THSC, §361.024, which authorizes the commission to adopt rules consistent with the Solid Waste Disposal Act and establish minimum standards for the management and control of solid waste; HB 2376, 79th Legislature; and SB 444, 79th Legislature.

The adopted amendments implement THSC, Chapter 374.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. NON-PERCHLOROETHYLENE USERS, FACILITIES, AND DROP STATIONS

30 TAC §337.61, §337.62

STATUTORY AUTHORITY

The amendments are adopted under the authority granted to the commission by the 79th Legislature and THSC, Chapter 374. The amendments are also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the

state; TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the Solid Waste Disposal Act; THSC, §361.024, which authorizes the commission to adopt rules consistent with the Solid Waste Disposal Act and establish minimum standards for the management and control of solid waste; HB 2376, 79th Legislature; and SB 444, 79th Legislature.

The adopted amendments implement THSC, Chapter 374.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT
SUBCHAPTER B. COMPENSATION

34 TAC §25.30, §25.31

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts without changes from the proposed rules as published new §25.30 regarding conversion of noncreditable compensation and new §25.31 regarding limits on compensation increases. TRS published notice of proposed new §25.30 and §25.31 in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6250).

New §25.30 implements the requirement under Senate Bill 1691, 79th Legislature, Regular Session (2005) (Senate Bill 1691) (to be codified at §825.110, Government Code) that the Board adopt rules excluding compensation in a TRS member's final years of employment that represents amounts converted from noncreditable compensation to creditable salary and wages. The proposed section applies to converted amounts received in any of the three years prior to retirement. The characterization of the compensation in the fourth or subsequent years prior to retirement is used to determine whether conversion occurred. New §25.30 provides that ineligible compensation converted to eligible compensation is excluded if it is received in any of the last three school years prior to retirement. The new section explains when conversion occurs and provides that the compensation must be for services that are performed in the future. Payment for unused accrued leave, including compensatory leave for overtime, is expressly excluded as being eligible for conversion. This provision does not represent a change in current policy but reinforces that payment for unused leave cannot be converted to creditable compensation because by definition it is not salary and wages.

New §25.30 also provides that the "look-back" period will include only compensation converted after the current 2005-2006 school year. The new section allows a member to convert ineligible compensation during the current school year and avoid exclusion under the rule, provided the member begins to receive the eligible compensation during the current school year. New §25.30 relies on the certification of the reporting entity to notify TRS if conversion has occurred. The rule allows a member to provide documentation supporting a determination that the compensation is creditable if compensation is reported as converted salary but provides that TRS makes the final decision regarding its status as creditable compensation. Further, the new section provides for TRS to refund member contributions on excluded amounts.

TRS received comments on new §25.30 as published September 30, 2005 from the Texas Federation of Teachers (TFT) and from Texas Tech University (Texas Tech). TFT commented that the proposed rule should be changed to apply only to members in certain job classifications such as school district superintendents and other employees "able to exert direct and substantial influence on the amount and form of their own compensation." TRS disagrees with this suggestion because there is no express provision in the bill that limits the application of the law to only members serving in certain job classifications. Further, there is no information available at this time that supports a determination by the TRS Board that increases in the salaries of TRS members in the suggested job classifications have any more significant actuarial impact on the pension fund than late-career increases in the compensation of other members in other job classifications.

TFT and Texas Tech both commented that the proposed rule published September 30 should be changed so that payments for unused compensatory time made to non-exempt employees under the Fair Labor Standards Act (FLSA) would not be excluded from creditable compensation. Texas Tech further commented that payments for unused state compensatory time should also not be excluded as creditable compensation. TRS disagrees with these comments. The definition of compensation as salary and wages is established in the statutory terms of the TRS plan and that definition precludes a determination that payments for unused compensatory time are creditable compensation. Rules adopted by the Board cannot change the law. To avoid any confusion on this type of payment and to promote consistency in the application of the law to all members, the proposed new rule includes language that specifically addresses payments for unused compensatory leave.

Additionally, TFT commented at the November 4, 2005 Board meeting on new §25.30 that TRS should credit payments for accrued FLSA compensatory time because employers control whether the employees receive overtime wages as they earn them or compensatory leave in lieu of the wages. TRS disagrees with this comment because the characterization of compensation as creditable is not based on the member having any control over the type or amount of compensation received but whether the compensation is salary and wages as defined in the TRS plan terms. If the employee is paid with compensatory leave for overtime worked, the compensation is leave, not a payment of money as required for TRS purposes. If the employer later pays the employee money for any compensatory leave not taken, the payment of money is for unused leave, not for service, and is usually valued at the current rate of pay, not the rate of

pay at the time the overtime service was rendered. Further, the fact remains that current statutory law--§822.201, Government Code--prevents TRS from crediting compensation received for unused FLSA compensatory time.

Texas Tech also suggested that TRS add a subsection to new §25.30 to clarify that the rule does not apply to amounts deducted from regular pay pursuant to a written salary reduction agreement for a federally or state qualified deferred compensation arrangement, tax sheltered annuity program, or cafeteria plan for benefit options. TRS disagrees with the suggestion because statute already clearly provides that certain types of deferred compensation when paid as provided in §822.201, Government Code, are creditable compensation that would not be subject to the proposed conversion rule as published. Also, the additional language proposed by Texas Tech goes too far in that it could exempt amounts converted from noncreditable compensation so long as the amounts paid for unused compensatory leave are paid as deferred compensation in subsequent years. TRS does not agree that converted amounts paid through deferred compensation arrangements should have protection from exclusion under this rule.

On new §25.30, the Texas Classroom Teachers Association (TCTA) commented that FLSA compensatory time earned during the three (or five) years prior to retirement should be included in the calculation of the defined benefit for the employee and that the rule should be changed accordingly. TRS disagrees with TCTA's comment and suggestion because, as already stated in response to similar comments, the statute §822.201, Government Code, defines salary and wages as payments of money for service and prevents TRS from crediting payments for unused compensatory time. Aside from the statutory obstacle, TCTA's suggestion would have an adverse actuarial impact on the system by crediting the compensation only when it benefits the member and depriving the pension fund of the contributions on this type of payment over the career of the member and thereby defeat the purpose of both §825.110 as amended by SB 1691 and new §25.30 implementing it. Under TCTA's suggestion, member contributions would be deducted from payments for unused compensatory time only during the last years of employment preceding retirement. Member contributions on these types of lump sum payments that are deposited with TRS just prior to retirement cannot begin to fund the increased retirement benefits associated with the payments. Including payments for unused compensatory leave only during the last years prior to retirement puts the entire burden of the cost of the lifelong increased payments on the pension fund. This type of late career increase in salary is the type of increase TRS is required to address in §825.110.

New §25.31 implements the requirement under SB 1691 that the Board adopt rules limiting the amount of increases in annual compensation subject to credit and deposit during a member's final years of employment. The proposed new rule caps the increase in compensation during the last three years before retirement at the greater of 110% of the previous year's compensation or the previous year's compensation plus $10,000. The base line amount used to determine the amount of allowable compensation in the third school year prior to retirement is the greater of either the amount of compensation paid in the fourth school year prior to retirement or the fifth school year prior to retirement. If there is no compensation in either the fourth or fifth school year prior to retirement, the base amount is the earliest salary credited in the three school years prior to retirement. If the member does not have credited compensation in at least three school years during the last five school years prior to retirement, the cap does not apply. The proposed rule specifies that increases in compensation because of a change in employers, a change in duties, the performance of additional duties or work, legislation, or federal or state law will not be excluded. Also, the rule provides that no adjustment in compensation will be made under the new rule if the limit on compensation will not affect the member's retirement benefit. Proposed new §25.31 also provides that only compensation earned after the 2005-2006 school or contract year will be subject to the limit on increases and only salaries earned in the 2005-2006 school/contract year and thereafter will be used to calculate the base salary amount. The proposed rule provides for the refund of member contributions on ineligible compensation. The exceptions provided in proposed new §25.31 address the most common reasons employers give to justify increases in salary.

TRS received comments from the Texas Federation of Teachers (TFT) on this proposed rule. TFT commented that the proposed rule should be changed to apply only to members in certain job classifications such as school district superintendents and other employees "able to exert direct and substantial influence on the amount and form of their own compensation." TRS disagrees with this suggestion because there is no express provision in the bill that limits the application of the law to only members serving in certain job classifications. Further, there is no information available at this time that supports a determination by the TRS Board that increases in the salaries of TRS members in the suggested job classifications have any more significant actuarial impact on the pension fund than late-career increases in the compensation of other members in other job classifications. However, by establishing the $10,000 threshold amount, the 110% cap effectively will apply only to those members making more than $100,000.

TFT also commented that amounts paid for unused FLSA compensatory time should not count towards any limit proposed in §25.31. TRS agrees with this comment, but for a different reason. The definition of compensation as salary and wages is established in the statutory terms of the TRS plan and that definition precludes a determination that payments for unused compensatory time are creditable compensation. Rules adopted by the Board cannot change the law. Because these payments are not compensation for TRS purposes, they will not count towards the limit in this rule. However, payments for overtime worked under FLSA to non-exempt employees is creditable compensation when it is paid as it is earned and in the proposed rule amounts paid for overtime worked under FLSA (federal law) are not counted towards the limit.

Additionally, TFT commented at the November 4, 2005 Board meeting on new §25.31 that TRS should credit payments for accrued FLSA compensatory time because employers control whether the employees receive overtime wages as they earn them or payments for unused leave. TRS disagrees with this comment for the same reason stated above in connection with new §25.30: the characterization of compensation as creditable is not based on the member having any control over the type or amount of compensation received but whether the compensation is salary and wages as defined in the TRS plan terms. The fact remains that current statutory law--§822.201, Government Code--prevents TRS from crediting in benefit computations compensation received for unused FLSA compensatory leave.

Statutory Authority for New §25.30 and §25.31: §22 of SB 1691, which amends §825.110, Government Code, to require the

Board to adopt rules (1) to exclude from annual compensation all or part of salary and wages in the final years of a member's employment that reasonably can be presumed to have been derived from a conversion of fringe benefits, maintenance, or other payments not includable in annual compensation to salary and wages and (2) to adopt a percentage limit on the amount of increases in annual compensation that may be subject to credit and deposit during a member's final years of employment; and §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
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For further information, please call: (512) 542-6438

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION, PLACEMENT, AND PROGRAM COMPLETION

SUBCHAPTER C. MOVEMENT WITHOUT PROGRAM COMPLETION

37 TAC §85.41

The Texas Youth Commission (the commission) adopts the repeal of §85.41, concerning Maximum Length of Stay for Other Than Type A Violent and Sentenced Offenders, without changes to the proposed text as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 8000).

The justification for the repeal of the section is to allow for a significantly revised rule to be published in its place.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2006.

TRD-200600213
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: February 1, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 424-6014

♦ ♦ ♦

37 TAC §85.41

The Texas Youth Commission (the commission) adopts new §85.41, concerning Maximum Length of Stay, without changes to the proposed text as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 8001).

The justification for the new rule is the efficient use of agency resources. The new section allows only general offenders to be released under this rule. Additionally, the length of time such youth must serve in high restriction to be eligible for release is now calculated based on a certain number of months in addition to (as opposed to elapsed since completion of) the minimum length of stay plus any disciplinary extensions. Furthermore, the timeframe during which a youth must be free of Category 1 rule violations in order to be eligible for release under this rule is lowered from 90 days to 30 days prior to the exit review. The deadline by which an eligible youth must be released to parole is reduced from 45 days after the exit review to 30 days.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2006.

TRD-200600212
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: February 1, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 424-6014

♦ ♦ ♦

CHAPTER 91. PROGRAM SERVICES

SUBCHAPTER D. HEALTH CARE SERVICES

37 TAC §91.99

The Texas Youth Commission (the commission) adopts the repeal of §91.99, concerning Medical Admissions for Al Price State Juvenile Correctional Facility, without changes to the proposed text as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 8002).

The justification for the repeal is the efficient use of agency resources. The repeal reflects the agency's determination that due to the small number of youth with chronic illnesses requiring frequent care in TYC custody, the operation of a specialized dorm to

house such youth is no longer necessary. Such youth continue to receive necessary medical care in accordance with rules established by the agency which govern the provision of medical care.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2006.

TRD-200600214
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: February 1, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 424-6014

♦ ♦ ♦

CHAPTER 95. YOUTH DISCIPLINE
SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §95.21

The Texas Youth Commission (the commission) adopts an amendment to §95.21, concerning the Aggression Management Program, without changes to the proposed text as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 8003).

The justification for amending the section is to provide for the timely parole release of eligible youth. The amended rule allows youth to be released from the Aggression Management Program (AMP) to parole when youth complete AMP requirements and meet release criteria pursuant to new §85.41, which is adopted in this issue of the *Texas Register*. If a youth completes AMP requirements, but does not meet release criteria under §85.41, the youth will be released from AMP to the general population in a placement determined by the Centralized Placement Unit.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 12, 2006.

TRD-200600215
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: February 1, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 424-6014

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Review

Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas (Commission) files this notice of its readoption of 16 TAC Chapter 9, relating to LP-Gas Safety Rules, in accordance with Texas Government Code, §2001.039. The Commission's reasons for adopting these rules continue to exist; however, in a separate pending rulemaking, the Commission has proposed some amendments to §9.9, relating to Requirements for Certificate Renewal, and §9.51, relating to General Requirements for Training and Continuing Education. The Commission proposed the amendments to §9.9 and §9.51 to improve the efficiency and to recover the cost of administering LP-gas examinations, examination renewals, and training requirements for persons who handle LP-gas in the course of their employment with a state agency, county, municipality, school district, or other governmental subdivision and who elect to become Railroad Commission certified to perform LP-gas activities even though currently they are not required to do so. That proposal is still pending.

The notice of intent to review the rules in Chapter 9 was published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7747); the Commission received no comments. This concludes the review of all rules in Chapter 9.

Issued in Austin, Texas on January 10, 2006.

TRD-200600178
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: January 11, 2006

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §3.80(a)

Table 1. Railroad Commission Oil and Gas Division Forms

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
AOF-1	Field Application for AOF Status	10/95	3.31
AOF-2	Individual Operator Application for AOF Status	10/95	3.31
AOF-3	Operator's Review of AOF Status	12/95	3.31
C-1	Carbon Black Plant Report	7/66	3.54, 3.63
C-2	Application for Permit to Operate a Carbon Black Plant	7/66	3.54, 3.63
C-3	Permit to Operate Carbon Black Plant	12/67	3.54, 3.63
CF-1	Commercial Facility Bond	8/98	3.78
CF-2	Commercial Facility Irrevocable Letter of Credit	8/98	3.78
G-1	Gas Well Back Pressure Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16,3.28, 3.31
G-3	Gas Storage Data Sheet	10/94	3.96, 3.97
G-5	Gas Well Classification Report	1/86	3.53
G-9	Gas Cycling Report	4/71	
G-10	Gas Well Status Report	9/00	3.28, 3.53,3.55, 3.71
GC-1	Gas Well Capability	5/92	3.31
GT-1	Geothermal Production Test, Completion or Recompletion Report, and Log	01/76	3.4, 3.16,3.33
GT-2	Producer's Monthly Report of Geothermal Wells	01/76	Tex. Nat. Res. Code, Ch. 141
GT-3	Monthly Geothermal Gatherer's Report	01/76	Tex. Nat. Res. Code, Ch. 141
GT-4	Producer's Certificate of Compliance and Authorization to Transport Geothermal Energy and/or Natural Gas and/or Other Minerals	01/76	Tex. Nat. Res. Code, Ch. 141
GT-5	Application to Inject Fluid into a Reservoir Productive of Geothermal Resources	9/75	Tex. Nat. Res. Code, Ch. 141
H-1	Application to Inject Fluid into a Reservoir Productive of Oil or Gas	4/82 Revision effective 05/01/04	3.46
H-1A	Injection Well Data for H-1 Application	4/82 Revision effective 05/01/04	3.46
H-1S	Injection Well Area Permit	12/98	3.46
H-2	Permit Application to Create, Operate and Maintain a Brine Mining Facility	5/99	3.81
H-4	Application to Create, Operate and Maintain an Underground Hydrocarbon Storage Facility	4/82	3.95, 3.97
H-5	Disposal/Injection Well Pressure Test Report	6/85	3.9, 3.46, 3.96
H-7	Fresh Water Data Form	3/68	3.46
H-8	Crude Oil, Gas Well Liquids, or Associated Products Loss Report	6/70	3.20
N/A	Interim H-8 Crude Oil Spill Sheet	12/93	3.20
H-9	Certificate of Compliance, Statewide Rule 36 (Hydrogen Sulfide)	12/77	3.36
H-10	Annual Disposal/Injection Well Monitoring Report (RRC computer-generated)	7/95	3.9, 3.46
H-10H	Annual Well Monitoring Report Underground Storage in Salt Formations	7/95	3.95, 3.96,3.97

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
H-11	Application for Permit to Maintain and Use a Pit	5/84	3.8
H-12	New or Expanded Enhanced Oil Recovery Project and Area Designation Approval Application	10/03	3.50
H-13	EOR Positive Production Response Certification Application	4/90	3.50
H-14	Enhanced Oil Recovery Reduced Tax Annual Report	2/93	3.50
H-15	Test on an Inactive Well More than 25 Years Old	8/93	3.14
H-20	Hazardous Oil and Gas Waste Generator (and Transporter) Notification	6/96	3.98
H-21	Annual Hazardous Oil and Gas Waste Report	10/01	3.98
L-1	Electric Log Status Report	1/02	3.16
MD-1	Optional Operator Market Demand Forecast for Gas Well Gas in Prorated Fields	5/92	3.31
OW-1	**Application for Authority to Conduct a Surface Inspection of Orphaned Oil or Gas Wells**		**Tex. Nat. Res. Code, §89.060**
OW-2	**Application for Certificate of Designation as the Operator of Orphaned Oil or Gas Wells**		**Tex. Nat. Res. Code, §89.060**
OW-3	**Application for Payment for Reactivating or Plugging an Orphaned Oil or Gas Well**		**Tex. Nat. Res. Code, §89.060**
PR	Monthly Production Report	New Form effective for production reports filed for 01/05 or after 5:00 pm CT 02/11/05	3.27, 3.54, 3.58
[~~P-1~~]	[~~Producer's Monthly Report of Oil Wells~~]	[~~1/96 (New Form PR effective for production reports filed for 01/05 or after 5:00 pm CT 02/11/05)~~]	[~~3.27, 3.58~~]
P-1B	Producer's Monthly Supplemental Report	9/90	3.50, 3.80
[~~P-2~~]	[~~Producer's Monthly Report of Gas Wells~~]	[~~1/96 (New Form PR effective for production reports filed for 01/05 or after 5:00 pm CT 02/11/05)~~]	[~~3.27, 3.54~~]
P-3	Authority to Transport Recovered Load or Frac Oil	3/77	3.58
P-4	Producer's Certificate of Compliance and Transportation Authority	5/02	3.1, 3.14, 3.30,3.58, 3.73, 3.78
P-5	Organization Report	1/87	3.1
P-5 IWB	Individual Well Bond	11/00	3.78
P-5 IWLC	Individual Well Irrevocable Documentary Letter of Credit	1/02	3.78
P-5LC	Irrevocable Documentary Blanket Letter of Credit	2/01	3.78
P-5 PB(1)	Individual Performance Bond	2/01	3.78
P-5PB(2)	Blanket Performance Bond	2/01	3.78
P-5S	P-5 Supplemental Officer Listing	9/91	3.1

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
N/A	Franchise Tax Certification (The Commission will accept a copy of the Certificate of Account Status from the Texas Comptroller of Public Accounts in lieu of the Commission's form.)	11/01	3.1
P-6	Request for Permission to Consolidate/Subdivide Leases	5/02	3.26, 3.27, 3.38,3.39, 3.58
P-7	New Field Designation and/or Discovery Allowable Application	2/89	3.41, 3.42
P-8	Request for Clearance of Storage Tanks Prior to Potential Test	12/82	3.58
P-12	Certificate of Pooling Authority	5/01	3.31, 3.38, 3.40
P-13	Application of Landowner to Condition an Abandoned Well for Fresh Water Production	9/79	3.14
P-15	Statement of Productivity of Acreage Assigned to Proration Units	5/71	3.31
P-17	Application for Exception to Statewide Rules 26 and/or 27 (Commingling)	1/78	3.26, 3.27
P-17A	Interim Commingling / Measurement Application Supplement	6/97	3.26, 3.27
P-18	Skim Oil/Condensate Report	1/86	3.56
PS-79	Application for a Permit to Construct a Sour Gas Pipeline Facility	3/98	3.106
R-1	Monthly Report and Operations Statement for Refineries	1974	3.61
R-2	Monthly Report for Reclaiming and Treating Plants	12/77	3.8, 3.57
R-3	Monthly Report for Gas Processing Plants	10/00	3.54, 3.56,3.60, 3.62
R-4	Gas Processing Plant Report of Gas Injected	9/75	3.54
R-5	Certificate of Compliance (Gasoline Plants and Refineries)	3/72	3.61
R-6	Application for Certificate of Compliance (Cycling Plant)	9/75	3.62
R-7	Pressure Maintenance & Repressuring Plant Report	*	3.54
R-9	Application for Permit to Operate Reclamation Plant	2/90	3.57
S-10	Application for Transfer of Allowable, Casing Leak Well East Texas Field)	2/89	Field Rules
ST-1	Application for Texas Severance Tax Incentive Certification	10/03	3.83, 3.101,3.103
T-1	Monthly Transportation & Storage Report	3/72	3.59
T-4, T-4A, T-4C	Forms relating to pipeline permits; under jurisdiction of the Safety Division	T-4: 9/99T-4A: 4/99T-4C: 4/97	3.70
T-6	Pipeline Company Monthly Report of Gas Exported from Texas	1948	Exec. Order
T-7	Dist. 10 Panhandle Fields Monthly Gas Gatherer Report	6/91	Dkt. 10-87017
VCP-1	Voluntary Cleanup Program Application	11/03	4.401 - 4.405
VCP-2	Voluntary Cleanup Program Agreement	11/03	4.401 - 4.405
W-1	Application to Drill, Deepen, Plug Back, or Reenter	9/01 (Revision effective 07/01/04)	3.5
W-1A	Substandard Acreage Drilling Unit Certification	5/01	3.38
W-1D	Supplemental Directional Well Information	07/01/04	3.5
W-1H	Supplemental Horizontal Well Information	07/01/04	3.5
W-1X	Application for Future Re-Entry of Inactive Wellbore and 14(b)(2) Extension Permit	10/03	3.14, 3.78
W-2	Oil Well Potential Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16,3.46, 3.51
W-3	Plugging Record	12/92	3.14

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
W-3A	Notice of Intention to Plug and Abandon	1/83	3.14
W-4	Application for Multiple Completion	8/69	3.6
W-4A	Sketch of Multiple Completion Installation	8/69	3.6
W-5	Packer Setting Report	8/69	3.6
W-6	Communication or Packer Leakage Test	1/70	3.6
W-7	Bottom-hole Pressure Report	*	3.41
W-9	Net Gas-Oil Ratio Report	7/69	RRC Order, §49
W-10	Oil Well Status Report	7/95	3.26, 3.27,3.52, 3.53
W-12	Inclination Report	1/71	3.11
W-14	Application to Dispose of Oil & Gas Waste by Injection into a Porous Formation Not Productive of Oil or Gas	1/82 Revision effective 05/01/04	3.9
W-15	Cementing Report	4/83	3.8, 3.13, 3.14
WH-1	Application for Oil and Gas Waste Hauler's Permit (formerly Application for Salt Water Hauler's Permit)	4/94	3.8
WH-2	Oil and Gas Waste Hauler's List of Vehicles (formerly Salt Water Hauler's Permit Bond)	4/94	3.8
WH-3	Oil and Gas Waste Hauler's Authority to Use Approved Disposal/Injection System	4/94	3.8
W-21	Application for Exception to Statewide Rule 21 to Produce by Swabbing, Bailing, or Jetting	2/03	3.21
Data Sheet	SWR 32 Exception Data Sheet	2/99	3.32
Data Sheet	SWR 10 Exception Data Sheet	*	3.10
EPA 8700-12	RCRA Subtitle C Site Identification Form (not an RRC form but required)	01/04	3.98
N/A	Claim for Proceeds of Salvage	9/94	Tex. Nat. Res. Code, §89.086
N/A	Request for Notice by Lienholder or Non-Operator	9/94	Tex. Nat. Res. Code, §§89.043(c), 89.085(f), 91.115(f)
SAD	Security Administrator Designation (SAD) Form	07/04	3.80

Figure: 19 TAC §61.1018(b)(4)(A)

Central Administrators	
004	Ass't/Assoc. Superintendent
012	Instructional Officer (Central Office)
027	Superintendent/CAO/CEO/President
028	Teacher Supervisor (Central Office)
032	Vocational Education Coordinator (Central Office)
040	Athletic Director (Central Office)
043	Business Manager
044	Tax Assessor and/or Collector
045	Director – Personnel/Human Resources
055	Registrar (Central Office)
Campus Administrators	
003	Assistant Principal
012	Instructional Officer (not Central Office)
020	Principal
028	Teacher Supervisor
032	Vocational Education Coordinator (not Central Office)
040	Athletic Director (not Central Office)
055	Registrar (not Central Office)

Figure: 19 TAC §61.1018(b)(4)(B)

60	Executive Director
61	Assistant/Associate/Deputy Executive Director
62	Component/Department Director
63	Coordinator/Manager/Supervisor

Figure: 19 TAC §153.1022(d)

Years Experience	Monthly Amount
0	2,482
1	2,541
2	2,599
3	2,658
4	2,782
5	2,906
6	3,030
7	3,145
8	3,254
9	3,357
10	3,454
11	3,546
12	3,634
13	3,715
14	3,793
15	3,866
16	3,936
17	4,001
18	4,063
19	4,122
20 & Over	4,177

Figure: 22 TAC §203.16(c)

Date _____-_____-_____

Total Time Spent:_____

Permission To Embalm: Yes ☐ No ☐
Treatment to proceed on basis of:
____ signed authorization ____ oral authorization
____ statutory 3-hr attempt to secure Name & location where embalming procedure was performed:_____
____ orders from _____ _____

Deceased _____ Mortuary _____

Age c._____ yrs. Race _____Sex: ☐ male ☐ female Weight c._____lbs. Height c._____ft._____in.

Date of death _____Time ____:____ am pm Time of removal ____:____ am pm Date:____-____-____

PRE-EMBALMING OBSERVATIONS

Operation before death? ☐ No ☐ Yes Type/Area _____ _____
Autopsy performed? ☐ No ☐ Yes ☐ Complete ☐ Torso/Trunk ☐ Cranial ☐ Before embalming ☐ After embalming
Viscera: ☐ Retained ☐ Received
Time between death and treatment: c._____hrs. Time between receipt of remains and treatment: c. _____hrs.
Body: ☐ Warm ☐ Cold ☐ Refrigerated: Duration c._____ hrs. ☐ Thawed or Out of Refrigeration c._____hrs.
Rigor mortis: Yes_____No_____
Abdominal distension: ☐ No ☐ Yes ☐ Liquid ☐ Gas
Purge before embalming: ☐ No ☐ Yes Type:
Edema: ☐ Abdomen ☐ Thorax ☐ R. Leg ☐ L. Leg ☐ R. Arm ☐ L. Arm ☐ Face
Discolorations: ☐ Lividity ☐ Stain ____ in;_____
Lesions:_____
Comments: _____
_____

EMBALMING PROCEDURE

Arteries Injected:				**Veins Drained:**		**Disinfection:** (Check Appropriate Areas)	
Cm. Carotid	R-L	___ Iliac	R-L ___	Internal Jugular	R-L	Eyes _____	Other body orifices _____
Subclavian	R-L	Femoral	R-L	Axillary	R-L	Mouth _____	Nose _____
Axillary	R-L	Radial	R-L	_____Iliac	R-L	Body orifices packed _____	
Brachial	R-L	Dorsalis pedis	R-L	Femoral	R-L	Remains bathed with antiseptic soap _____	
Others _____				Others_____			

Condition of: Arteries: _____ Veins: _____

Injection:

pre-injection (co-injection)		1st ____gal.	2nd ____gal.	3rd ____gal.
arterial concentrate _____	(%)or(Index)	1st ____oz	2nd ____oz.	3rd ____oz.
arterial concentrate _____	(%)or(Index)	1st ____oz.	2nd ____oz.	3rd ____oz.
fluid modifier _____		1st ____oz.	2nd ____oz.	3rd ____oz.
humectant _____		1st ____oz	2nd ____oz.	3rd ____oz.
other _____		1st ____oz.	2nd ____oz.	3rd ____oz.

Injection Method: ☐ Continuous ☐ Alternate
Drainage: ☐ Intermittent ☐ Continuous
Quality of Drainage _____ Quality: ☐ Heavy clots ☐ Medium ☐ Light ☐ None
Cavity Treatment:
Cavity fluid _____(%) Quantity used _____oz. Method: ☐ Gravity ☐ Motorized ☐ Delayed ☐ Immediate

Autopsied cases: ☐ Viscera immersed ☐ Preservative powder used ☐ Additional treatment: _____

Other: ☐ Direct ☐ Topical ☐ Hypodermic Treatment(Check Appropriate Areas): ☐ Arms ☐ Torso ☐ Face ☐ Legs ☐ Neck
Distribution Exceptions _____
Additional Treatment _____
_____
Condition of Body at Completion (include comments on conditions noted above) _____
_____

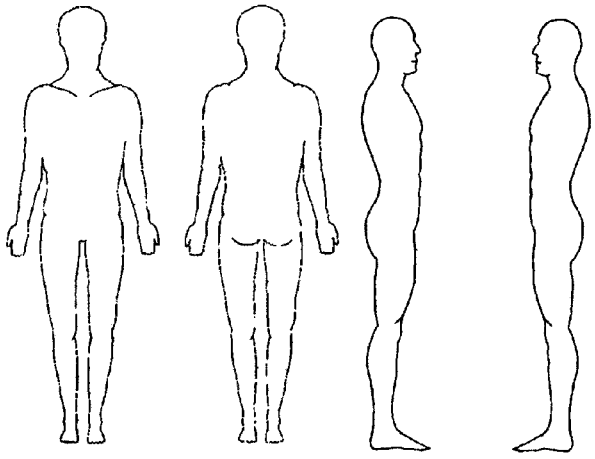
Posing Features
Mouth Closure : ☐ Suture ☐ Needle Injection ☐ Natural ☐ Dentures ☐ Cotton ☐ Other _____
Eye Closure ☐ Cotton ☐ Eye Caps ☐ Natural ☐ Other

IDENTIFICATION AND TREATMENT REFERENCE

Indicate on chart all identifying scars, incisions, lesions and special body characteristics.

Description of items marked on chart:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____



Date and Time Case Report Completed:_____

_____ License No. _____

Embalmer

_____ Provisional License No. _____

Student or Provisional Licensee

E. g. "housekeeping" post-embalming checklist (re-aspirated, dressed, etc.)

Figure: 25 TAC §289.204(e)

Category of License		Fee
(1)	Accelerator (Used for Production of Radioactive Material)	$15,319.00
(2)	Agency-Accepted Training Course (Involving Possession of Radioactive Material)	$3,676.00
(3)	Bone Mineral Analyzer	$1,987.00
(4)	Broad License	$20,698.00
(5)	Calibration Service (Survey Instrument)	$1,690.00
(6)	Calibration/Reference Source	$1,267.00
(7)	Civil Defense	$1,987.00
(8)	Decontamination Service	
	(A) Fixed Site	$25,597.00
	(B) Mobile	$8,392.00
(9)	Demonstration/Sales	$3,830.00
(10)	Environmental Laboratory	$1,564.00
(11)	Eye Applicator	$1,564.00
(12)	Fine Leak Testing Device	$4,815.00
(13)	Fixed Multi-Beam Teletherapy	$8,617.00
(14)	X-Ray Fluorescence	$1,987.00
(15)	Hand-held Light Intensifying Imaging Device	$1,987.00
(16)	Gas Chromatograph	$1,846.00
(17)	Gauge	
	(A) Spinning Pipe-Thickness/Portable	$2,816.00
	(B) Fixed	$2,268.00

Category of License		Fee
(18)	General License Acknowledgement-Gauge	$704.00
(19)	Industrial Radiography (Fixed Facility)	$5,660.00
(20)	Industrial Radiography (Temporary Field Site)	$11,912.00
(21)	Installer, Repair, or Maintenance	$3,126.00
(22)	Irradiator (Self-Contained)	$3,126.00
(23)	Irradiator (Unshielded)	$19,261.00
(24)	In-Vitro Use of Radioactive Material	$945.00
(25)	In-Vitro Test Kit Manufacturer	$4,915.00
(26)	Leak Test Service	$1,846.00
(27)	Manufacturing and Commercial Distribution	
	(A) Processor of Radioactive Material	$48,745.00
	(B) Other Manufacturing and Commercial Distribution	$7,941.00
	(C) Commercial Distribution Only	$3,676.00
	(D) Limited Manufacturing (loose material)	$7,096.00
(28)	Medical Therapy (Sealed Source)	$2,703.00
(29)	Medical Therapy (Unsealed Source)	$2,268.00
(30)	Mineral Recovery (Byproduct Material)	$66,895.00
(31)	Mobile Scanning Service	$4,393.00
(32)	Naturally Occurring Radioactive Material (NORM)-Commercial Processing	$25,597.00
(33)	Nuclear Medicine (Diagnostic)	$2,409.00
(34)	Nuclear Pharmacy	$7,096.00

Category of License		Fee
(35)	Neutron Generator Target	
	(A) Sealed	$2,028.00
	(B) Unsealed	$4,055.00
(36)	Pacemaker	$1,142.00
(37)	Pipe Joint Collar Marker	$2,268.00
(38)	Radiopharmaceutical Manufacturing	$20,979.00
(39)	Remote Controlled Brachytherapy Device (Includes Low Dose-Rate and High Dose-Rate Remote Afterloaders and Intravenous Brachytherapy)	$3,548.00
(40)	Research and/or Development	$2,985.00
(41)	Source Material	$3,830.00
(42)	Special Nuclear Material	$2,268.00
(43)	Teletherapy	$3,548.00
(44)	Tracer Studies (Used in Other Than Oil and Gas Industry Wellbores)	$6,533.00
(45)	Tracer Studies (Used in Oil and Gas Industry Wellbores)	$3,942.00
(46)	Waste Processing-Class I Exempt	$3,830.00
(47)	Waste Processing-Class I	$39,959.00
(48)	Waste Processing-Class II	$94,661.00
(49)	Waste Processing-Class III	$273,800.00
(50)	Well Logging	$3,942.00
(51)	Other Specific License	$1,987.00

Category of License		Fee
(52)	Additional Authorized Use Sites Where Radioactive Material is Stored or Used Under Same License or Where Only Records are Stored	25% of Applicable Fee Not to Exceed 50 Additional Sites
(53)	Reciprocity	Fee of Applicable Category

Figure: 25 TAC §289.204(j)

Category of Machine/Type of Use		Fee
(1)	Computerized Tomography (CT)	$1,656.00
(2)	Fluoroscopy	$816.00
(3)	Accelerator, Simulator, or Other Therapeutic Radiation Machine	$586.00
(4)	Radiographic Machines Only	$517.00
(5)	Podiatric Radiographic Only	$374.00
(6)	Dental Radiographic Only	$330.00
(7)	Veterinary, Including CT, Fluoroscopy, and Accelerators	$264.00
(8)	Industrial Radiography	
	(A) Fixed Facility	$1,702.00
	(B) Temporary Job Sites	$2,852.00
(9)	Other Industrial	$575.00
	(A) Diffraction	
	(B) Computerized Tomography	
	(C) Fluoroscopy	
	(D) Flash Radiography	
	(E) Hand-held Light Intensifying Image Devices	
(10)	Morgues and Educational Facilities Utilizing Radiation Machines for Non-human Use, Including CT, Fluoroscopy, and Accelerators	$575.00
(11)	Minimal Threat Radiation Machines as Specified in 25 TAC §289.231(ll)(3)	$264.00
	(A) Cathodoluminescence	
	(B) Electron Beam Welding	
	(C) Fluorescence X-Ray	
	(D) Gauge--X-Ray	
	(E) Ion Implantation	
	(F) Package X-Ray	
	(G) Particle Size Analyzer--X-Ray	
	(H) Cabinet X-Ray (Certified)	
	(I) Other	
(12)	Exposure Rate or Dose Measurements performed by a Licensed Medical Physicist as Specified in 25 TAC §289.226(b)(9)	$253.00

Category of Machine/Type of Use		Fee
(13)	Services as Specified in 25 TAC §289.226(b)(10) (A) Exposure Rate or Dose Measurements (B) Radiation Machine Output Measurements (C) Agency-Accepted Training Courses (D) Calibration (E) Demonstration/Sales (F) Assembly, Installation or Repair (G) Equipment Performance Evaluations on Dental Radiation Machines (H) Provider of Equipment	$253.00
(14)	Laser--Medical/Research/Academic	$200.00
(15)	Laser--Industrial/Services/Entertainment	$340.00
(16)	Reciprocity	Fee of Applicable Category
(17)	Additional Authorized Use Location Where Radiation Machines or Services are Authorized Under the Same Registration	30% of Applicable Fee

Figure: 25 TAC §289.204(m)

	License Category	New Application	Operational Status	Closure Only	Post-Closure
(a)	Conventional	$463,096		$121,859	$104,023
(b)	In Situ	$322,633	$121,859	$121,859	$52,012
(c)	Heap Leach	$325,910			
(d)	Disposal Only	$374,729	$121,859	$121,859	$104,023

Figure: 30 TAC §116.12(18)(A)

TABLE I

MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS

POLLUTANT designation[1]	MAJOR SOURCE tons/year	SIGNIFICANT LEVEL[2] tons/year	OFFSET RATIO minimum
OZONE (VOC, NOx)[3, 6]			
I marginal[7]	100	40	1.10 to 1
II moderate	100	40	1.15 to 1
III serious	50	25	1.20 to 1
IV severe	25	25	1.30 to 1
CO			
I moderate	100	100	1.00 to 1[4]
II serious	50	50	1.00 to 1[4]
SO_2	100	40	1.00 to 1[4]
PM_{10}			
I moderate	100	15	1.00 to 1[4]
II serious	70	15	1.00 to 1[4]
NO_x[5]	100	40	1.00 to 1[4]
Lead	100	0.6	1.00 to 1[4]

[1] Texas nonattainment area designations are specified in 40 Code of Federal Regulations §81.344.

[2] The significant level is applicable only to existing major sources and shall be evaluated after netting, unless the applicant chooses to apply nonattainment new source review (NNSR) directly to the project. The appropriate netting triggers for existing major sources of NO_x and VOC are specified in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) and for other pollutants are equal to the major modification level listed in this table.

[3] VOC and NO_x are precursors to ozone formation and should be quantified individually to determine whether a source is subject to NNSR under §116.150 of this title. As specified in §116.150 of this title, for El Paso County, the NNSR rules apply to sources of VOC, but not to sources of NO_x.

[4] The offset ratio is specified to be greater than 1.00 to 1.

VOC = volatile organic compounds

NO_x = oxides of nitrogen

NO_2 = nitrogen dioxide

CO = carbon monoxide

SO_2 = sulfur dioxide

PM_{10} = particulate matter with an aerodynamic diameter less than or equal to ten microns

[5] Applies to the NAAQS for nitrogen dioxide (NO_2).

[6] For the Houston-Galveston-Brazoria, Dallas-Fort Worth, and Beaumont-Port Arthur eight-hour ozone nonattainment areas, if the United States Environmental Protection Agency promulgates rules requiring new source review permit applications in these areas to be evaluated for NNSR according to that area's one-hour standard classification, each application will be evaluated according to that area's one-hour standard classification. Evaluation includes both the threshold for determining if there is a major modification as well as the ratio of offsets required along with any other applicable requirement that depends upon an area's nonattainment classification.

[7] For areas designated as nonattainment for ozone under Federal Clean Air Act, Title I, Part D, Subpart 1 (42 United States Code, §7502), each application will be evaluated as if that area was designated as Marginal. Evaluation includes both the threshold for determining if there is a major modification as well as the ratio of offsets required along with any other applicable requirement that depends upon an area's nonattainment classification.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Public Hearing Regarding the Issuance of Bonds

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at 12:00 p.m. on February 13, 2006 at 1005 Congress Avenue, Suite B10 (Conference Room), Austin, Texas 78701, on the proposed issuance by the Issuer of one or more series of revenue bonds (the "Bonds") to provide financing for the acquisition of single family mortgages in the State of Texas, pursuant to its professional educators home loan programs (the "Project"). The maximum aggregate face amount of the Bonds to be issued with respect to the Project is $25,000,000. All interested persons are invited to attend the public hearing to express orally, or in writing, their views on the Project and the issuance of the Bonds. The Bonds shall not constitute or create an indebtedness, general or specific, or liability of the State of Texas, or any political subdivision thereof. The Bonds shall never constitute or create a charge against the credit or taxing power of the State of Texas, or any political subdivision thereof. Neither the State of Texas, nor any political subdivision thereof shall in any manner be liable for the payment of the principal of or interest on the Bonds or for the performance of any agreement or pledge of any kind which may be undertaken by the Issuer and no breach by the Issuer of any agreements will create any obligation upon the State of Texas, or any political subdivision thereof. Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to David Long at the Texas State Affordable Housing Corporation, 1005 Congress Avenue, Suite 500, Austin, Texas 78701; 1-888-638-3555 ext. 402.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Smith, ADA Responsible Employee, at 1-888-638-3555, ext. 400 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to David Long at dlong@tsahc.org.

TRD-200600224
David Long
President
Texas State Affordable Housing Corporation
Filed: January 13, 2006

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Department of Aging and Disability Services

Notice of Public Hearing for the 2006 - 2007 State Mental Retardation Facilities (SMRF) Report

Notice is hereby given of a public hearing to be held by the Department of Aging and Disability Services (DADS) at the Winters Building, 701 W. 51st Street, Public Hearing Room, Austin, Travis County, Texas 78751 at 2:00 p.m. on February 14, 2006, with respect to accepting comments and recommendations in regards to the preparation of the 2006 - 2007 State Mental Retardation Facilities (SMRF) Report. The public hearing provides an opportunity for interested parties to comment and make recommendations to DADS. Recommendations and comments should be based on the 2004 - 2005 SMRF Report that will be considered in formulating the 2006 - 2007 SMRF Report.

For the convenience of the reader, the SMRF Report, which is posted on the Health and Human Services Commission website as part of the Health and Human Services Enterprise Strategic Plan for Fiscal Years 2005 - 2009, has been posted as a stand alone document on the DADS website. The 2004 - 2005 SMRF Report is available at: http://www.dads.state.tx.us/news_info/publications/planning/SMRF_Report.html. Individuals may request a paper copy of this report by contacting Nellie Nixon at (512) 438-5634.

All interested parties are invited to attend this public hearing to express their views with respect to comments on the 2004 - 2005 SMRF Report. Questions or requests for additional information may be directed to Nellie Nixon at the Department of Aging and Disability Services, P.O. Box 149030, M.C. W235, Austin, Texas 78714; (512) 438-5797; or nellie.nixon@dads.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Nellie Nixon in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Nellie Nixon prior to the date scheduled for the hearing.

Individuals who require a language interpreter for the hearing should contact Nellie Nixon at least three days prior to the hearing date at (512) 438-5634 or TDD (512) 424-3250.

TRD-200600236
Phoebe Knauer
General Counsel
Department of Aging and Disability Services
Filed: January 17, 2006

♦ ♦ ♦

Texas Alcoholic Beverage Commission

Enforcing the Underage Drinking Laws - Request for Applications

The Texas Alcoholic Beverage Commission (TABC) is soliciting applications for projects that improve or promote the enforcement of underage drinking laws. TABC is able to award funding to state agencies, local units of government (cities, counties, school districts), Native American tribal governments, nonprofit corporations, and colleges and universities through the Department of Justice's Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Enforcing the Underage Drinking Laws (EUDL) Program. Awards will range from $20,000 to $50,000. Complete guidelines for the funding opportunity are available in the application kit.

Funding applications must be received at the TABC, 5806 Mesa Drive, Austin, TX 78731, **no later than 5:00 P.M. on Wednesday, March 15, 2006.**

Applications will be scored competitively using peer review. All funding decisions related to these grants are fully within the discretion of the TABC Administrator.

For further information, or to request an application kit by mail, contact the Education and Prevention Division at (512) 206-3430 or via e-mail at grants@tabc.state.tx.us.

Program Announcement

Underage Drinking is a problem that requires continuous attention from the prevention, education, and enforcement fields. While the State of Texas currently allocates resources to address underage drinking, more needs to be done. The Texas Alcoholic Beverage Commission's primary goal for participating in the EUDL Program is to increase the state's ability to effectively enforce underage drinking laws and to prevent youth access to and illegal use of alcohol.

Through this competitive Request for Applications (RFA), applicants may request funds for a variety of projects that help meet this goal. While this program may fund any innovative underage drinking prevention program or alcohol age-law enforcement effort, TABC would like to fund programs that address one or more of the following problems:

* Underage drinking in small towns or rural areas; and/or the

* Underage drinking on and around college campuses.

Project applications should also clearly explain how the following components will be incorporated into the program:

* Partnerships with multiple aspects of the community;

* Partnerships with youth in planning and carrying out program activities; and

* Use of multiple fact-based strategies to reduce demand for and/or access to alcoholic beverages among underage youth in the impact area.

Applicants are encouraged to pursue initiatives that involve environmental approaches. Environmental approaches include efforts that seek to change policy, target enforcement efforts to identified problems, change the general attitudes of the public and retailers about underage drinking, and/or address retailer or other community-based practices encouraging underage drinking, to name a few.

Funding preference will be given to applicant programs that are currently operating, but could expand efforts with additional funds.

General Requirements

Applications must present a documented underage drinking problem and clearly detail a comprehensive approach to addressing the problem. This approach should involve several education, prevention, enforcement, and/or prosecution-based strategies and include many key community players. Applicants must explain why additional resources are needed and how grant funds will be used to contribute to the implementation of the approach.

Coordination

Grant applications must describe how the project will be coordinated with existing programs and policies, with particular attention to documenting that grant funds will be used to create new projects or expand existing ones. Preference will be given to projects that outline a plan to continue efforts should future year funding not be available.

Evaluation

Grant applications must include measurable goals with baseline data (data for the year before the grant). Actual results for each goal will be compared with baseline data. Grantees must report quarterly to the TABC on progress report forms provided by the agency.

Eligible Applicants

State agencies, local units of government (cities, counties, school districts), Native American tribal governments, nonprofit corporations, and colleges and universities are eligible to apply for the TABC grants under the EUDL fund. Applicants may provide services directly or under contract with other cities, counties, school districts, private companies, or non-profit organizations. Colleges and universities that apply must address how they will coordinate project efforts with the surrounding community.

Amount of Each Grant

Grant awards will range from $20,000 to $50,000 per year. Subject to the quality of the applications received, the demonstrated problem, and the demonstrated need for additional resources, the TABC, when selecting applications for grant awards, will attempt to distribute those awards across the state and between focus areas. **FUNDS WILL BE AVAILABLE ON A REIMBURSEMENT BASIS ONLY.**

Grant Period

All grants will be awarded for a project period of twelve months. The project period will begin on June 1, 2006, and conclude on May 31, 2007. Requests for project extensions will not be considered or approved.

Matching Funds

Funded applicants must provide a project "match" equal to at least 25 percent of total project cost. This match may be in the form of cash and/or in-kind contributions, and approved indirect costs may be counted towards the match requirement.

Non-Supplanting Requirement

Federal funds shall not be used to supplant state or local funds and shall only be used to start new initiatives or expand existing programs.

Construction Costs

Land acquisition and construction costs are ineligible.

Equipment Purchases

Equipment purchases are ineligible. Equipment rental may be approved.

Continuation Funding Policy

Grants will be awarded for a period of one year. Applicants may apply for continuation funding in subsequent years, subject to the availability of federal funds.

Reports

Grantees must submit quarterly progress reports and financial expenditure reports. TABC will supply the necessary forms and instructions following grant awards. Failure to submit reports on time will result in a financial hold on grant funds until the reports are submitted.

Grants may be terminated if guidelines are not met.

Deadline for Submission

Original applications must be mailed to TABC **no later than 5:00 P.M. BY WEDNESDAY, MARCH 15, 2006.** Faxed, e-mailed or incomplete applications will not be accepted.

Texas Review and Comment System

A copy of each grant application must be submitted to the appropriate Regional Council of Governments (COG) or to the State Single Point of Contact (SPOC) for TRACS review. The applicant is responsible for this submission and for submitting a copy of the TRACS review letter to TABC.

Selection Process

Applications will be scored competitively, using the scoring instrument included in the application kit. All funding decisions related to these grants are fully within the discretion of the TABC Administrator or his designee. TABC informs the applicant of this decision through either an award or denial letter. Applicants must not make any assumptions regarding funding decisions until they have received official written notification of award or denial that is signed by either the TABC Administrator or the Grant Programs Administrator. Funding will be awarded by April 30, 2006. All applicants should plan to attend a grant delivery meeting in May 2006 at TABC Headquarters in Austin.

Program Authorization

This block grant funding is authorized under the Enforcing the Underage Drinking Laws Program, authorized by the Omnibus Consolidated and Emergency Supplemental Appropriation Act of 1999, Public Law 105-277, FY 2001 Appropriations Act, Public Law 106-553.

For Further Information

For further information, or to request an application kit by mail, contact the Education and Prevention Division at (512) 206-3430 or via e-mail at grants@tabc.state.tx.us.

TRD-200600172
Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
Filed: January 11, 2006

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Texas Building and Procurement Commission

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Family and Protective Services), announces the issuance of **Request for Proposals (RFP) #303-6-10784**. TBPC seeks a five year lease of approximately 2,534 square feet of office space in Cleburne, Johnson County, Texas.

The deadline for questions is February 8, 2006 and the deadline for proposals is February 24, 2006 at 3:00 P.M. The award date is March 6, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at: http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=62735.

TRD-200600211
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: January 12, 2006

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 6, 2005, through January 12, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on January 18, 2006. The public comment period for these projects will close at 5:00 p.m. on February 17, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: Galveston County Municipal Utility District #12; Location: The project is located within the subdivisions of Omega Bay and Bayou Vista, off Highlands Bayou, located northwest of the Highway 6 and I-45 intersection, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Virginia Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 311765; Northing: 3245703. Project Description: The applicant proposes to perform maintenance hydraulic dredging within the existing canals in the Bayou Vista and Omega Bay subdivisions to maintain recreational navigation. Approximately 60,000 cubic yards of material will be dredged from Omega Bay and Bayou Vista. The canals will be dredged to a maximum depth of 8 feet below mean lower low water. The canals vary from 75 to 100 feet wide. The surface area of the canals to be dredged would be 18.5 acres. The dredge material will be utilized to restore up to 8 acres of emergent saline marsh at two locations adjacent to the residential neighborhoods. The first marsh restoration area would be located west of Omega Bay, within the existing marsh restoration area associated with Corps Permit No. 22473(01), and will be called the Omega Bay Mitigation Area. The second marsh restoration area would be located south of Bayou Vista, within the Saconas Marsh, and will be called the Bayou Vista Mitigation Area. CCC Project No.: 06-0115-F1; Type of Application: U.S.A.C.E. permit application #24013 is being evaluated under §10 of the Rivers and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Texas Department of Transportation; Location: The project is located in wetlands and other waters within a 120-foot-wide right-of-way of State Highway (SH) 87 from the ferry landings at Bolivar for a distance of 30.2 miles to approximately 2,000 feet south of the Gulf Intracoastal Waterway bridge north of High Island in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: Galveston, Flake, Caplen, Frozen Point, and High Island, Texas. Approximate UTM Coordinates in NAD 27 (meters) at the west project terminus: Zone 15; Easting: 327303; Northing: 3249477. Approximate UTM Coordinates in NAD 27 (meters) at the east project terminus: Zone 15; Easting: 365489; Northing: 3274610. Project Description: The applicant proposes to raise the elevation of SH 87 to approximately 5 feet above mean high tide. The project includes the discharge of fill into 8.40 acres of wetlands and 0.18 acre other waters and the temporary discharge of fill into 2.38 acres of wetlands and other waters for the raising of the road elevation and maintenance of ditches to improve surface drainage. CCC Project No.: 06-0122-F1; Type of Application: U.S.A.C.E. permit application #23899 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The con-

sistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: St. Mary Land and Exploration; Location: The project is located in Galveston Bay State Tract (ST) 236, approximately 7.93 miles southeasterly from Smith Point, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Flake, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 333365; Northing: 3258776. Project Description: The applicant proposes to dredge an access canal, measuring approximately 22,000 feet, from the Houston Ship Channel to access the Elm Grove Prospect. The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities in ST 236. The proposed project would include installation of typical marine barges and keyways, a shell/gravel pad, and production structures with attendant facilities, and flowlines. Approximately 23.6 acres of bay bottom would be mechanically excavated and sidecast on the south side of the proposed access channel. Approximately 8.5 acres of bay bottom would be affected by the sidecast dredge material. CCC Project No.: 06-0125-F1; Type of Application: U.S.A.C.E. permit application #24032 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200600248
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
Coastal Coordination Council
Filed: January 18, 2006

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapters 403, 2155, and 2156, §2155.001 and §2156.121, Texas Government Code, and Chapter 2305, §2305.036, Texas Government Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO), announces the issuance of its Request for Proposals (RFP #175e) from qualified, independent firms or entities to provide energy efficient services and building technologies to low-to-moderate income households on behalf of the Housing Partnership Program (Program). One or more successful respondents will assist the Comptroller in providing the services and technologies and related services, as directed by the Comptroller. The Comptroller reserves the right to award one or more contracts under this RFP. The successful respondent(s), if any, will be expected to begin performance of the contract(s), if any, awarded under this RFP on or about March 1, 2006.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on or after Friday, January 27, 2006, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the complete RFP available electronically on the Texas Marketplace on or after Friday, January 27, 2006, 10:00 a.m. (CZT).

All written inquiries, questions, and Non-Mandatory Letters of Intent to propose must be received in the Issuing Office prior to 2:00 p.m. (CZT) on Friday, February 10, 2006. Prospective respondents are encouraged to fax Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The responses to questions and other information pertaining to this procurement will be posted on February 14, 2006, or as soon thereafter as practical, on the Texas Marketplace at: http://www.marketplace.state.tx.us. Questions and inquiries received after the deadline will not be considered; respondents are solely responsible for verifying timely receipt in the Issuing Office of Letters of Intent and Questions.

Closing Date: Proposals must be received in the Issuing Office at the location specified above no later than 2:00 p.m. (CZT), on Tuesday, February 21, 2006. Proposals received in the Issuing Office after this time and date will not be considered; respondents are solely responsible for verifying timely receipt of Proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay for no costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - January 27, 2006; Non-Mandatory Letters of Intent and Questions Due - February 10, 2006, 2:00 p.m. CZT; Official Questions and Responses Posted - February 14, 2006 (or as soon thereafter as practical); Proposals Due - February 21, 2006, 2:00 p.m. CZT; Contract Execution - March 1, 2006, or as soon thereafter as practical; Commencement of Project Activities - March 1, 2006.

TRD-200600243
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: January 18, 2006

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Credit Union Department

Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Energy Capital Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school within a 10-mile radius of the credit union office located at 18540 Northwest Freeway, Houston, Texas, to be eligible for membership in the credit union.

An application was received from Texas Employees Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit employees of the Jimmy Gary Insurance Agency who work in or

are paid or supervised from Arlington, Texas, to be eligible for membership in the credit union.

An application was received from PosTel Family Credit Union, Wichita Falls, Texas to expand its field of membership. The proposal would remove exclusionary language relating to employees in or residing in the Windthorst chartered area in Archer County, Texas.

An application was received from Texans Credit Union, Richardson, Texas to expand its field of membership. The proposal would permit individuals who live, work or attend school within a 10-mile radius of the Texans Credit Union branch located at 3232 Main Street, Frisco, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200600246
Harold E. Feeney
Commissioner
Credit Union Department
Filed: January 18, 2006

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership--Approved

Texas Health Resources Credit Union, Dallas, Texas--See *Texas Register* issue, dated October 28, 2005.

Application(s) for a Merger or Consolidation--Approved

Dallas County Credit Union (Dallas) and Texans Credit Union (Richardson)--See *Texas Register* issue, dated December 9, 2005.

Articles of Incorporation--50 Years to Perpetuity--Approved

Texas Dow Employees Credit Union, Lake Jackson, Texas

Gulf Credit Union, Groves, Texas

Hockley County School Employees Credit Union, Levelland, Texas

Abilene State School Credit Union, Abilene, Texas

ACU Credit Union, Abilene, Texas

THD 6 Credit Union, Odessa, Texas

Caprock Santa Fe Credit Union, Slaton, Texas

TRD-200600247
Harold E. Feeney
Commissioner
Credit Union Department
Filed: January 18, 2006

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Texas Commission on Environmental Quality

Notice of Issuance of a New Air Quality Standard Permit for Animal Carcass Incinerators

The Texas Commission on Environmental Quality (TCEQ) is issuing a new standard permit for animal carcass incinerators (ACIs) under Texas Health and Safety Code, Texas Clean Air Act, §382.05195, Standard Permit, and 30 TAC Chapter 116, Subchapter F, Standard Permits. The standard permit for ACIs will be effective January 16, 2006.

Copies of the standard permit for ACIs may be obtained from the TCEQ web site at *www.tceq.state.tx.us/assets/public/permitting/air/NewSourceReview/Combustion/acipc.pdf* or by contacting the TCEQ, Office of Permitting, Remediation, and Registration, Air Permits Division, at (512) 239-1250.

OVERVIEW OF AIR QUALITY STANDARD PERMIT

The draft standard permit for ACIs is applicable to those facilities and associated equipment that are used to incinerate animal carcasses and comply with the requirements as specified by the standard permit.

The new source review program under 30 TAC Chapter 116 requires any person who plans to construct any new facility or to modify any existing facility that may emit air contaminants into the air of the state to obtain a permit in accordance with §116.111, General Application, to satisfy the *de minimis* criteria of §116.119, *De Minimis* Facilities or Sources, or satisfy the conditions of a flexible permit, standard permit, or a permit by rule before any actual work is begun on the facility.

This standard permit requires ACIs to comply with certain administrative requirements including registration, a fee, general requirements, operational and design requirements, recordkeeping requirements, and executive director approval. Also, this standard permit requires that owners and operators of ACIs authorized by this standard permit provide public notice to ensure that local communities are informed of specific proposed ACI projects. Additionally, the new standard permit provides design and operational requirements to reduce emissions.

PUBLIC NOTICE AND COMMENT PERIOD

In accordance with 30 TAC §116.603, Public Participation in Issuance of Standard Permits, the TCEQ published notice of this standard permit in the *Texas Register* and newspapers of the largest general circulation in the following metropolitan areas: Amarillo, Austin, Corpus Christi, Dallas, El Paso, Houston, Lower Rio Grande Valley, Lubbock, Permian Basin, San Antonio, and Tyler. The date for these publications was June 24, 2005. The public comment period was from the date of publication until 5:00 p.m. on July 28, 2005.

PUBLIC MEETINGS

A public meeting on the proposal was held on July 28, 2005, at 9:00 a.m., at the Texas Commission on Environmental Quality in Building B, Room 201A, 12100 Park 35 Circle, Austin, Texas. One individual attended the meeting but provided no formal comments.

ANALYSIS OF COMMENTS

No comments were received on this standard permit.

TRD-200600234
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: January 17, 2006

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on January 17, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Rafati, Inc. dba El Paso Convenience Store; SOAH Docket No. 582-05-3371; TCEQ Docket No. 2002-0842-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Rafati, Inc. dba El Paso Convenience Store on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200600256
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 18, 2006

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 27, 2006.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 27, 2006.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing.**

(1) COMPANY: Army & Air Force Exchange Service; DOCKET NUMBER: 2004-2001-PST-E; IDENTIFIER: Petroleum Storage Tank Registration Number 56883, Regulated Entity Reference Number (RN) 103185112; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: fleet refueling center; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), (b)(2)(A)(i)(III) and (ii)(I), and the Code, §26.3475(a) and (c)(1), by failing to have a release detection method capable of detecting a release from underground storage tanks (USTs); and 30 TAC §334.47(a)(2), by failing to ensure that USTs meet the technical standards of a new UST system and permanently remove them from service; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Bandera County Fresh Water Supply District 1; DOCKET NUMBER: 2005-1911-PWS-E; IDENTIFIER: RN101209468; LOCATION: Lakehills, Bandera County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethane (TTHM); PENALTY: $318; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Cemex Cement of Texas, L.P.; DOCKET NUMBER: 2005-0793-AIR-E; IDENTIFIER: RN100213305; LOCATION: Odessa, Ector County, Texas; TYPE OF FACILITY: cement manufacturing; RULE VIOLATED: 30 TAC §101.201(e) and THSC, §382.085(b), by failing to adequately notify the TCEQ involving 31 opacity events; and 30 TAC §116.115(c), Air New Source Review Permit Numbers 5296 and 8410, and THSC, §382.085(b), by failing to comply with permitted opacity limits; PENALTY: $56,420; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(4) COMPANY: Double Diamond Utilities Company; DOCKET NUMBER: 2005-1663-MWD-E; IDENTIFIER: RN102329802; LOCATION: near Whitney, Hill County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13786-002, and the Code, §26.121(a), by failing to comply with the permitted effluent limit for total ammonia nitrogen and five-day carbonaceous biochemical oxygen demand; PENALTY: $5,280; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: City of Emory; DOCKET NUMBER: 2005-1535-MWD-E; IDENTIFIER: RN102916822; LOCATION: Emory, Rains County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10082001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for dissolved oxygen, ammonia nitrogen, and flow; PENALTY: $3,072; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6) COMPANY: Farmers Dairies, Limited; DOCKET NUMBER: 2005-1810-AIR-E; IDENTIFIER: RN100818756; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: milk processing plant; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to maintain the facility in a manner to prevent nuisance conditions; and 30 TAC §106.373(3)(A) and THSC, §382.085(b) and §382.0518(a), by failing to register the ammonia refrigeration system; PENALTY: $8,400; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(7) COMPANY: Five Nine Seven Limited Partnership dba Ramblewood Mobile Home Park; DOCKET NUMBER: 2005-1675-MWD-E; IDENTIFIER: RN101275378; LOCATION: Bryan, Brazos County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VI-

OLATED: 30 TAC §305.125(1) and (5), TPDES Permit Number 11038-001, and the Code, §26.121(a), by failing to prevent the discharge and accumulation of sludge in the receiving stream and by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; PENALTY: $5,600; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Flagstop Enterprises, Inc. dba Flagstop; DOCKET NUMBER: 2005-1921-PWS-E; IDENTIFIER: RN101283083; LOCATION: near Boerne, Bexar County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and (f)(3) and THSC, §341.033(d), by failing to collect and submit routine bacteriological samples and by exceeding the non-acute MCL for total coliform bacteria; PENALTY: $2,300; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: Galveston County Landfill Texas, L.P.; DOCKET NUMBER: 2005-1501-MLM-E; IDENTIFIER: RN100221597; LOCATION: Santa Fe, Galveston County, Texas; TYPE OF FACILITY: municipal solid waste (MSW); RULE VIOLATED: 30 TAC §330.56(n)(1)(B) and MSW Permit Number 1149A, by failing to prevent the concentration of methane gas from exceeding the lower explosive limit for methane; 30 TAC §§330.114(5), 330.117(c), and 335.2(b) and MSW Permit Number 1149A, by failing to prevent the disposal of Class 1 industrial waste; 30 TAC §335.6(c), by failing to update the facility's notice of registration; 30 TAC §330.136(b)(3)(B) and 40 Code of Federal Regulations (CFR) §61.154(f), by failing to properly record the location, depth, and volume of each load of regulated asbestos-containing material placed in the landfill; and 30 TAC §330.130 and MSW Permit Number 1149A, by failing to immediately notify the TCEQ of a landfill gas exceedance; PENALTY: $8,650; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Gillani Energy Company dba Super B Food Store; DOCKET NUMBER: 2005-1560-PST-E; IDENTIFIER: RN102248051; LOCATION: Balch Springs, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily inspections of the Stage II vapor recovery system (VRS) for defects and by failing to conduct monthly inspections of the Stage II VRS components; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain all required Stage II records on site and make immediately available for review; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that every current employee is made aware of the purposes and correct operating procedures of the Stage II VRS; 30 TAC §334.49(c)(4)(C) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to ensure that all USTs are monitored for releases and by failing to reconcile inventory control records on a monthly basis; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $9,000; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Gregory Power Partners, L.P.; DOCKET NUMBER: 2005-1746-AIR-E; IDENTIFIER: RN102547957; LOCATION: near Gregory, San Patricio County, Texas; TYPE OF FACILITY: natural gas-fired combined cycle cogeneration power plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(B), by failing to submit complete and/or accurate deviation reports; and 30 TAC §111.111(a)(1)(F) and §122.143(4)(A) and Federal Operating Permit Number O-01809, by failing to demonstrate compliance with Federal Operating Permit Number O-01809; PENALTY: $2,160; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(12) COMPANY: Darryl Haley dba Haley Enterprises; DOCKET NUMBER: 2005-1892-MSW-E; IDENTIFIER: RN104753306; LOCATION: Decatur, Wise County, Texas; TYPE OF FACILITY: unauthorized MSW disposal; RULE VIOLATED: 30 TAC §330.5(c), by allowing dumping of MSW without written authorization; PENALTY: $800; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Hines Nurseries, Inc.; DOCKET NUMBER: 2005-1447-IWD-E; IDENTIFIER: RN101648806; LOCATION: Rosenburg, Fort Bend County, Texas; TYPE OF FACILITY: plant nursery; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit Number 03015, and the Code, §26.121(a), by failing to comply with the five-day biochemical oxygen demand daily maximum concentration and by failing to submit the discharge monitoring reports; PENALTY: $4,752; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Hudson Water Supply Corporation; DOCKET NUMBER: 2005-1528-PWS-E; IDENTIFIER: RN101455954; LOCATION: Hudson, Angelina County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM; PENALTY: $408; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: LH Texas OpCo, LP dba The Richardson Hotel; DOCKET NUMBER: 2005-1803-PST-E; IDENTIFIER: RN101538767; LOCATION: Richardson, Dallas County, Texas; TYPE OF FACILITY: hotel; RULE VIOLATED: 30 TAC §334.51(b)(2)(A) - (C) and the Code, §26.3475(c)(2), by failing to equip the fill pipe of the UST with a tight-fill fitting adapter or similar device to provide a liquid-tight seal, by failing to equip the fill tube of the tank with an attached spill container or catchment basin, and by failing to equip the tank with a valve or other device designed to automatically shut off the flow of regulated substances; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the UST for releases; and 30 TAC §334.8(c)(4)(B) and the Code, §26.346(a), by failing to ensure that the UST registration and self-certification form is fully and accurately completed and submitted in a timely manner; PENALTY: $5,040; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Limestone Marina, Inc.; DOCKET NUMBER: 2005-1737-PWS-E; IDENTIFIER: RN102684321; LOCATION: near Jewett, Limestone County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and THSC, §341.033(d), by failing to collect monthly bacteriological samples; and 30 TAC §290.122(c)(2)(B), by failing to notify the public that routine bacteriological samples were not collected; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Michael Limos, (512)

239-5839; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Martin Product Sales L.L.C.; DOCKET NUMBER: 2005-1740-MWD-E; IDENTIFIER: RN101528933; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 04074, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for total zinc; PENALTY: $7,880; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: Saidul Kabir dba Quick Shop; DOCKET NUMBER: 2005-1730-PST-E; IDENTIFIER: RN102438835; LOCATION: Nacogdoches, Nacogdoches County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay UST fees; PENALTY: $3,360; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Regency Gas Services Waha, LP; DOCKET NUMBER: 2005-1529-AIR-E; IDENTIFIER: RN100211408; LOCATION: Coyanosa, Pecos County, Texas; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §§101.20(1), 116.110(a), 116.160(a), 122.121, and 122.210(a), 40 CFR §52.21(a)(2)(iii), and THSC, §382.085(b) and §382.0518(a), by failing to obtain new source review and prevention of significant deterioration permits and by failing to review Federal Operating Permit Number 02546; and 30 TAC §122.145(2)(A) and THSC, §382.085(b), by failing to report all deviations; PENALTY: $24,500; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(20) COMPANY: Sha Investment Corporation dba Diamond Shamrock 0758; DOCKET NUMBER: 2005-1626-PST-E; IDENTIFIER: RN102402542; LOCATION: Mesquite, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,920; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Shapla, Inc. dba Stop N Stock; DOCKET NUMBER: 2005-1365-PST-E; IDENTIFIER: RN101563625; LOCATION: Haltom City, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all tanks are monitored for releases; 30 TAC §334.48(c), by failing to properly conduct inventory control procedures for all USTs; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain records on site at the station and make them readily available for review; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II VRS; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure at least one station representative received training in the operation and maintenance of the Stage II VRS; PENALTY: $6,528; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Shell Pipeline Company, LP; DOCKET NUMBER: 2005-1236-AIR-E; IDENTIFIER: RN100219716; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: tank farm; RULE VIOLATED: 30 TAC §106.6(b) and §122.143(4), Permit By Rule Registration Number 56251, Air General Operating Permit (GOP) Number O-01160, and THSC, §382.085(b), by failing to maintain the short-term 5.66 pounds per hours volatile organic compound emission rate; 30 TAC §115.112(a)(1) and §122.143(4), GOP Permit Number O-01160, and THSC, §382.085(b), by failing to equip tanks with a submerged fill pipe or vapor system; and 30 TAC §122.145(2)(B) and (C), GOP Permit Number O-01160, and THSC, §382.085(b), by failing to report deviations in a timely manner; PENALTY: $11,680; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(23) COMPANY: Sherwin Alumina, L.P.; DOCKET NUMBER: 2005-1446-AIR-E; IDENTIFIER: RN102318847; LOCATION: Gregory, San Patricio County, Texas; TYPE OF FACILITY: alumina production plant; RULE VIOLATED: 30 TAC §111.111(a)(1)(C) and §116.115(c), NSR Air Permit Number 19732, and THSC, §382.085(b), by failing to meet the demonstrations for an affirmative defense; 30 TAC §101.20(1) and §116.115(c), NSR Air Permit Number 19732, 40 CFR §60.11(d), and THSC, §382.085(b), by failing to maintain and operate an affected facility in a manner consistent with good air pollution control practice for minimizing emissions; PENALTY: $4,425; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(24) COMPANY: Sivells Bend Independent School District; DOCKET NUMBER: 2005-1627-PWS-E; IDENTIFIER: RN101228021; LOCATION: Gainesville, Cooke County, Texas; TYPE OF FACILITY: public school system; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and THSC, §341.033(d), by failing to collect and submit monthly water samples for bacteriological analysis; PENALTY: $1,830; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: STS Gas Services, Inc. dba Greatwood Outpost; DOCKET NUMBER: 2005-1572-PST-E; IDENTIFIER: RN101878247; LOCATION: Sugar Land, Fort Bend County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.226 and §115.246(1), (3), (4), (6), and (7)(A) and THSC, §382.085(b), by failing to maintain records on site for inspection of all required Stage I and II records pertaining to a UST system; 30 TAC §334.10(b), by failing to maintain the UST records as required; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and (ii), and (d)(4)(A)(i), and the Code, §26.3475(a) and (c)(1), by failing to ensure that all tanks are monitored, by failing to test the line leak detectors, by failing to have each pressurized line tested or monitored for releases, and by failing to reconcile inventory control records; PENALTY: $5,396; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Tiffany Brick Company, L.P. dba Hanson Brick; DOCKET NUMBER: 2005-1900-AIR-E; IDENTIFIER: RN100212034; LOCATION: Elgin, Bastrop County, Texas; TYPE OF FACILITY: brick manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 34632, and THSC, §382.085(b), by failing to meet the sulfur dioxide and hydrogen chloride emission limits; PENALTY: $4,160; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(27) COMPANY: Union Tank Car Company; DOCKET NUMBER: 2005-1541-AIR-E; IDENTIFIER: RN100224575; LOCATION: Cleveland, Liberty County, Texas; TYPE OF FACILITY: railcar construction and leasing; RULE VIOLATED: 30 TAC §122.146(2), Federal Operating Permit Number O-01539, and THSC, §382.085(b), by failing to submit the annual compliance certification; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: United Equipment Rentals Gulf, L.P.; DOCKET NUMBER: 2005-1669-AIR-E; IDENTIFIER: RN100810977; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: equipment rental and leasing; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by allowing the transfer of gasoline from a storage vessel with a Reid vapor pressure greater than seven pounds per square inch absolute; PENALTY: $856; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(29) COMPANY: United States Army Corps of Engineers; DOCKET NUMBER: 2004-0328-PWS-E; IDENTIFIER: RN102690146, RN102690427, and RN102690708; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: public water supplies; RULE VIOLATED: 30 TAC §290.46(f)(2), by failing to make available for review all required operating records for the facility; 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary control easement; 30 TAC §290.45(c)(1)(A)(i) and THSC, §341.0315(c), by failing to meet the water capacity requirements for a noncommunity transient water system; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices; PENALTY: $1,372; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(30) COMPANY: Rose T. Wong and Mitchel Wong; DOCKET NUMBER: 2005-0785-EAQ-E; IDENTIFIER: RN102757010; LOCATION: Cedar Park, Williamson County, Texas; TYPE OF FACILITY: land; RULE VIOLATED: 30 TAC §213.23(a)(1)(B), by failing to receive commission approval of a new Edwards Aquifer contributing zone plan prior to commencing construction; and 30 TAC §213.4(k), by failing to maintain temporary best management practices; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

TRD-200600235
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: January 17, 2006

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Request for Preliminary Comments for Review and Revision of the Texas Surface Water Quality Standards

The Texas Commission on Environmental Quality (TCEQ) is requesting preliminary written comments on the Texas Surface Water Quality Standards, 30 TAC Chapter 307. This request for written comments is in preparation of review and revision as needed of the Texas Surface Water Quality Standards.

The Texas Surface Water Quality Standards establish instream water quality requirements for Texas streams, rivers, lakes, estuaries, and other water bodies. Revisions are made to: (1) incorporate new information on potential pollutants; (2) include additional data about water quality conditions in specific water bodies; (3) address new state and federal regulatory requirements; and (4) accommodate public concerns and public goals for water quality in the state.

The TCEQ is directed to establish water quality standards in Texas Water Code, §26.023. The federal Clean Water Act requires that states publicly review and revise their water quality standards as needed every three years.

The TCEQ is also requesting preliminary written comments in preparation of review and revision of procedures for implementing the Texas Surface Water Quality Standards in wastewater discharge permits. The implementation procedures are described in Procedures to Implement the Texas Surface Water Quality Standards Via Permitting (Standards Implementation Procedures, TCEQ RG-194 (Revised), January 2003). The Standards Implementation Procedures address how wastewater discharge permits are developed to maintain instream water quality standards. Review and revision of the Standards Implementation Procedures will be conducted concurrently with review and revision of the Texas Surface Water Quality Standards.

Written responses to these preliminary comments will not be provided. However, the TCEQ will review and consider preliminary comments and other information during the development of draft proposals for revisions of the Texas Surface Water Quality Standards and the Standards Implementation Procedures. Proposed revisions will be subject to formal public hearing and comment prior to adoption.

Written comments on the Texas Surface Water Quality Standards or the Standards Implementation Procedures can be sent by letter or by e-mail. Letters should be submitted to Ms. Sidne Tiemann, MC 150, Texas Commission on Environmental Quality, Water Quality Division, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-4606. E-mail comments should be submitted to *stiemann@tceq.state.tx.us.* Comments must be received by 5:00 p.m. on March 1, 2006. Comments on both documents can be included in a single letter or e-mail, but must be on separate pages or in separate sections. Clearly indicate to which document the comments pertain.

Copies of the current Texas Surface Water Quality Standards or the Standards Implementation Procedures can be obtained from TCEQ Publications, (512) 239-0028 or online from the TCEQ web site located at *http://www.tceq.state.tx.us/permitting/water_quality/wq_assessment/standards/WQ_standards_2000.html.*

TRD-200600237
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: January 17, 2006

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General Land Office

Notice of Major Consulting Service Request for Qualifications

The Texas General Land Office (GLO) is seeking consulting services to assist the GLO in identifying financial partners as part of the GLO's Border Energy Forum grant awarded by the U. S. Environmental Protection Agency (EPA). Prospective consultants must be able to identify and attract new sources of international financing for the Texas border region. This financing is necessary to help spur development of sustainable energy projects with the Mexican states along the Texas Border.

Pursuant to §§2254.021 - 2254.040, TEX. GOV'T CODE, the GLO is requesting offers of consulting services to assist in attracting new sources of international financing for the aforementioned projects from approximately March 3, 2006 through August 31, 2007.

The requested consultant services will require an understanding of international financing, including, but not limited to, emerging European and Canadian markets. The consultant selected to provide these services will be responsible for:

(i) analyzing the region's ability to attract these sources;

(ii) developing a strategic plan to be presented at the Border Energy Forum;

(iii) helping facilitate the aforementioned workshop; and

(iv) assisting with the preparation of a final report.

The GLO reserves the right to evaluate the qualifications and experience of any Respondents, to reject any and/or all responses, and to negotiate specific terms of an agreement that are in the best interest of the state. The closing date for receipt of offers of these consulting services is 5:00 p.m. CDT, February 28, 2006. Further information may be obtained by contacting Soll Sussman, General Land Office, 1700 N. Congress Avenue, Austin, TX 78701-1495, phone (512) 463-5039.

TRD-200600255
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: January 18, 2006

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Texas Health and Human Services Commission

Public Notice - Intent to Amend Transmittal Number TX05-004, Amendment Number 701

The Health and Human Services Commission received approval from the Centers for Medicare and Medicaid Services to amend the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act, by Transmittal Number TX05-004, Amendment Number 701.

This amendment extends the effective period for the current nursing facility (NF) and intermediate care facility for the mentally retarded (ICF/MR) rates to August 31, 2007. As a result, NF and ICF/MR rates will remain constant through the end of the 2006-2007 Biennium. This amendment also modifies the state plans for the Primary Home Care Program and the Day Activity and Health Services Program so that rates for the 2006-2007 Biennium will be equal to the rates in effect on August 31, 2003. These changes are being made to conform to Legislative appropriations for these programs for the 2006-2007 Biennium.

The amendment is effective as of September 1, 2005. The amendment does not have an impact on the amount of federal matching funds to the state for the NF or ICF/MR programs. It is expected to increase federal matching funds to the state for the Primary Home Care Program and the Day Activity and Health Services Program as follows:

FY 2006

Primary Home Care - $5,324,226

Day Activity and Health Services - $692,749

FY 2007

Primary Home Care - $5,983,274

Day Activity and Health Services - $751,798

For additional information, please contact Gilbert Estrada, Policy Development Support with the Medicaid/CHIP Division, by phone at (512) 491-1331 or by e-mail at gilbert.estrada@hhsc.state.tx.us.

TRD-200600241
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: January 18, 2006

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Department of State Health Services

Notice of Emergency Cease and Desist Order on Rice Nuclear Diagnostics, L.P.

Notice is hereby given that the Department of State Health Services (department) ordered Rice Nuclear Diagnostics, L.P. (registrant-R29080-000) of Houston to cease and desist using the Siemens x-ray unit until the entrance exposure radiation level is within regulatory limits.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600269
Cathy Campbell
General Counsel
Department of State Health Services
Filed: January 18, 2006

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant American Eagle Well Logging, Inc.

Notice is hereby given that the Department of State Health Services issued a notice of violation and proposal to assess an administrative penalty to American Eagle Well Logging, Inc. (License #L04133-001) of Wichita Falls. A total penalty of $4,000 is proposed to be assessed to the registrant for alleged violations of 25 TAC Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600266
Cathy Campbell
General Counsel
Department of State Health Services
Filed: January 18, 2006

♦ ♦ ♦

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Anatec, Inc.

Notice is hereby given that the Department of State Health Services issued a notice of violation and proposal to assess an administrative penalty to Anatec, Inc. (License #L04865-002) of Nederland. A total penalty of $4,000 is proposed to be assessed to the registrant for alleged violations of 25 TAC Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600265

Cathy Campbell
General Counsel
Department of State Health Services
Filed: January 18, 2006

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Chappell Hill Logging Systems, Inc.

Notice is hereby given that the Department of State Health Services issued a notice of violation and proposal to assess an administrative penalty to Chappell Hill Logging Systems, Inc. (License #L05374-000) of Chappell Hill. A total penalty of $4,000 is proposed to be assessed to the registrant for alleged violations of 25 TAC Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600263
Cathy Campbell
General Counsel
Department of State Health Services
Filed: January 18, 2006

♦ ♦ ♦

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Gamma Surveys, LLC

Notice is hereby given that the Department of State Health Services issued a notice of violation and proposal to assess an administrative penalty to Gamma Surveys, LLC (License #L05155-004) of La Porte. A total penalty of $4,000 is proposed to be assessed to the registrant for alleged violations of 25 TAC Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600262
Cathy Campbell
General Counsel
Department of State Health Services
Filed: January 18, 2006

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Henry Schein, Inc., dba Sullivan-Schein Dental Products

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Henry Schein, Inc., dba Sullivan-Schein Dental Products (registrant #R18006-005) of Melville, NY. A total penalty of $16,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600268
Cathy Campbell
General Counsel
Department of State Health Services
Filed: January 18, 2006

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Plant and Pipeline Inspection

Notice is hereby given that the Department of State Health Services issued a notice of violation and proposal to assess an administrative penalty to Plant and Pipeline Inspection (License #L05746-000) of Rockport. A total penalty of $4,000 is proposed to be assessed to the registrant for alleged violations of 25 TAC Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600261
Cathy Campbell
General Counsel
Department of State Health Services
Filed: January 18, 2006

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Ray Partha, dba Trilogy Medical Services

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Ray Partha, dba Trilogy Medical Services (unregistered) of Houston. A total penalty of $8,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600267
Cathy Campbell
General Counsel
Department of State Health Services
Filed: January 18, 2006

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Reinhart and Associates, Inc.

Notice is hereby given that the Department of State Health Services issued a notice of violation and proposal to assess an administrative penalty to Reinhart and Associates, Inc. (License #L03189-004) of Austin. A total penalty of $4,000 is proposed to be assessed to the registrant for alleged violations of 25 TAC Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600260

Cathy Campbell
General Counsel
Department of State Health Services
Filed: January 18, 2006

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Siemens Medical Solutions USA, Inc.

Notice is hereby given that the Department of State Health Services issued a notice of violation and proposal to assess an administrative penalty to Siemens Medical Solutions USA, Inc. (License #L05884) of Dallas. A total penalty of $4,000 is proposed to be assessed to the registrant for alleged violations of 25 TAC Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600264
Cathy Campbell
General Counsel
Department of State Health Services
Filed: January 18, 2006

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Texas Department of Housing and Community Affairs

HOME Investment Partnerships Program

Notice of Funding Availability

Hurricane Rita Disaster Relief

The Texas Department of Housing and Community Affairs (Department) announces the availability of approximately $8,300,000 for the Hurricane Rita Disaster Relief funding cycle for the HOME Investment Partnerships Program (HOME). The availability and use of these funds is subject to the State HOME Rules (10 TAC Chapter 53) and the Federal HOME regulations governing the HOME Program (24 CFR Part 92). Please note that some HOME Program requirements have been waived for participating jurisdictions in Presidentially declared disaster areas due to Hurricane Rita.

ALLOCATION OF HURRICANE RITA DISASTER RELIEF FUNDS

The Texas Government Code, Section 2306.111(c), requires that TDHCA allocate no less than 95% of HOME Program Funds to applicants which serve households located in a nonparticipating jurisdiction (non-PJ). The remaining five percent of the HOME Program funds may be allocated to applicants in a participating jurisdiction (PJ), only if the applicant serves 100% persons with disabilities. However, this requirement has been waived by the Governor in an effort to facilitate efforts to serve the critical housing needs of those affected by Hurricane Rita.

ELIGIBLE APPLICANTS

Only the following identified Texas Counties, as declared by the Governor, affected by Hurricane Rita are eligible to apply for funds:

1. Angelina
2. Brazoria
3. Chambers
4. Fort Bend
5. Galveston
6. Hardin
7. Harris
8. Jasper
9. Jefferson
10. Liberty
11. Montgomery
12. Nacogdoches
13. Newton
14. Orange
15. Polk
16. Sabine
17. San Augustine
18. San Jacinto
19. Shelby
20. Trinity
21. Tyler
22. Walker

CONTRACT TERM

The Contract period for the written agreement with the Department will be for 12 months.

MAXIMUM CONTRACT AMOUNTS

The $500,000 maximum award amount has been waived given the Governor's declaration. Based on the amount of funding being made available, a proposed tier system for distributing the funds is provided below:

Proposed Tier System for Distributing HOME Disaster Relief Funds

Methodology

The most recent reported data from the State of Texas State Operations Center (SOC) on Hurricane Rita damage was used to rank each county based on its relative share of damaged dwellings in the 22 county1 disaster area (Table 1). Using this table and a map of the disaster area, a three tier system was developed to determine each county's maximum award amount. The tier breakdown is as follows:

* Tier 1: Counties with more than 20 percent of the reported damage in the region.

* Tier 2: Counties with between 1 percent and 20 percent of the reported damage in the region.

* Tier 3: Counties with less than 1 percent of the reported damage in the region.

The relative levels of poverty and low income households in the disaster area's counties were also reviewed. While there were slight variances between counties, these differences did not appear significant enough to warrant inclusion in a more complicated tier categorization formula. These percentages are also shown in Figure 1.

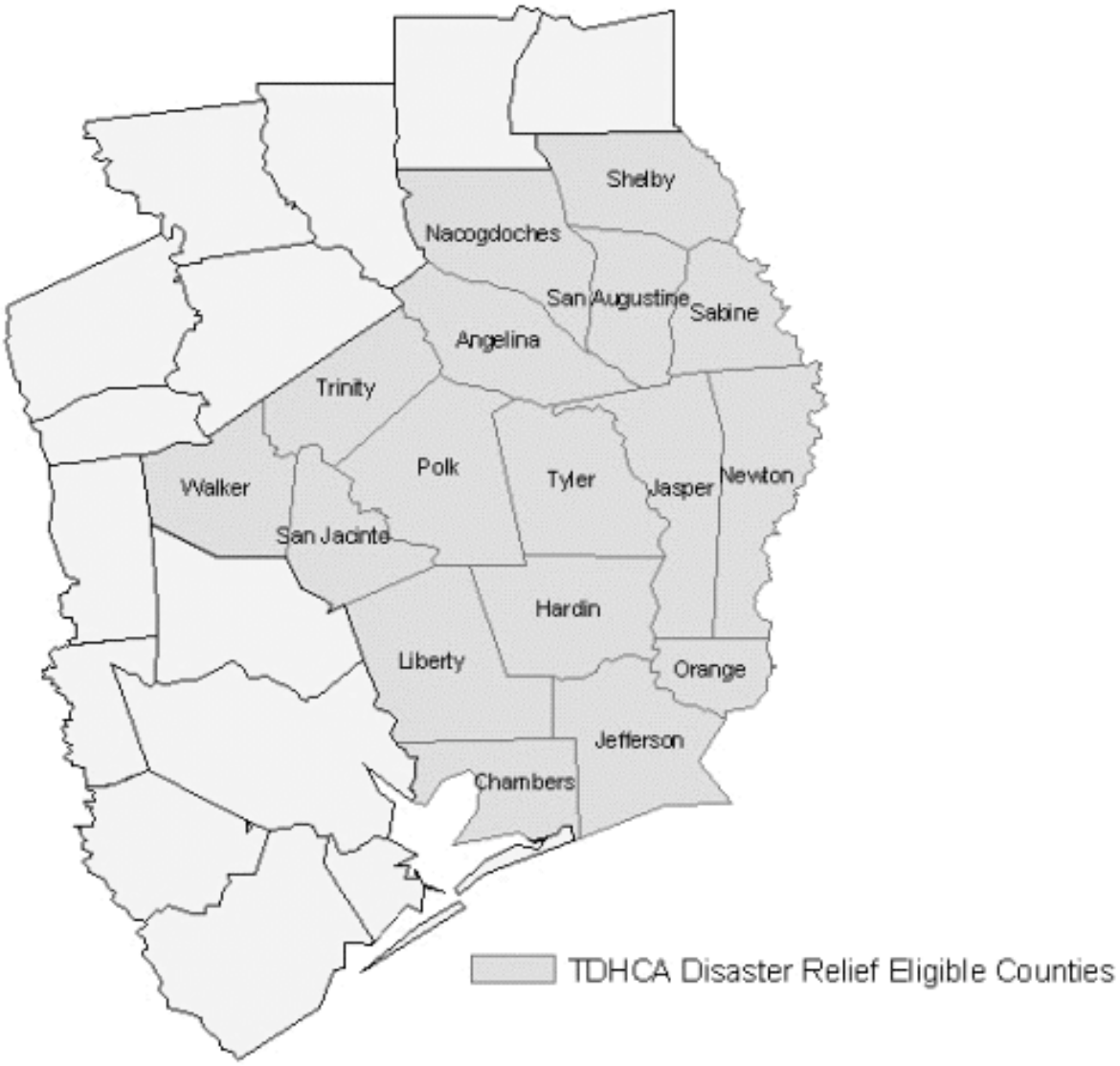
Figure 1. County Tier Distribution Based on Reported Damage by County

	Col. 1	Col. 2	Col. 3			General Need Indicators	
Disaster County	Single Family Dwellings Destroyed	Single Family Dwellings w/ Major Damage	Total Single Family Dwellings Damaged (Col. 1 + 2)	% of Damaged Dwellings in Disaster Area (Col. 3/ Col. 3 Ttl.)	Tier	% of Total Households in Poverty	% of Households w/ Incomes < 50% AMFI
Orange	3,600	9,000	12,600	36.08%	1	11.39%	23.46%
Hardin	6,050	4,440	10,490	30.04%	1	8.77%	20.45%
Jefferson	1,001	7,256	8,257	23.64%	1	14.58%	27.24%
San Jacinto	250	500	750	2.15%	2	15.08%	27.19%
Jasper	33	534	567	1.62%	2	15.03%	26.25%
Tyler	150	375	525	1.50%	2	12.59%	23.69%
Newton	55	355	410	1.17%	2	15.51%	27.85%
Angelina	35	330	365	1.05%	2	12.37%	23.22%
Polk	29	329	358	1.03%	2	13.29%	23.76%
Chambers	7	134	141	0.40%	3	8.32%	23.21%
Liberty	7	127	134	0.38%	3	11.14%	30.76%
Sabine	20	94	114	0.33%	3	11.76%	26.05%
Trinity	15	80	95	0.27%	3	13.17%	28.59%
Harris	16	27	43	0.12%	3	12.10%	24.25%
Nacogdoches	1	34	35	0.10%	3	15.52%	31.19%
Montgomery	4	25	29	0.08%	3	7.14%	19.16%
San Augustine	0	5	5	0.01%	3	15.62%	28.14%
Shelby	0	3	3	0.01%	3	14.88%	26.77%
Brazoria*	-	-	-	0.00%	3	8.08%	22.24%
Fort Bend*	-	-	-	0.00%	3	5.48%	13.24%
Galveston*	-	-	-	0.00%	3	10.13%	24.96%
Walker*	-	-	-	0.00%	3	10.62%	28.17%
Total	11,273	23,648	34,921				

* These counties did not reply to SOC survey. Source: State of Texas, State Operations Center (SOC), Subject: Hurricane Rita, Situation Report # 40, Date and Time Covered: Tuesday, December 13, 2005, 1:00 p.m. through Friday, December 16, 2005, 1:00 p.m.

Figure 2 shows the resulting geographic boundaries of the proposed tier system. From the location of the non-reporting counties from the SOC survey, it appears that their non-reporting status is consistent with relatively low levels of damage.

Figure 2. Map of County Tier Distribution Based on Reported Damage by County



Funding Distribution

Tier 1 Up to $2 million each for Hardin, Jefferson, and Orange Counties ($6 million total)

Tier 2 Up to $300,000 each for Angelina, Jasper, Newton, Polk, San Jacinto and Tyler Counties ($1.8 million total)

Tier 3 Up to $150,000 each for the remaining counties ($500,000 total)

DESCRIPTION OF ACTIVITIES

Owner Occupied Housing Assistance (OCC), rehabilitation or reconstruction cost assistance, is provided to homeowners affected by Hurricane Rita for the repair or reconstruction of their existing home. The home must be the principal residence of the homeowner.

Assistance will be provided in the form of a grant for individuals at or below 30% AMFI. For individuals between 31% and 50% AMFI, assistance will be in the form of a five year deferred forgivable loan. For those individuals at 51% AMFI or above, assistance will be in the form of a 0%, thirty year repayable loan.

At the completion of the assistance, all properties must meet all applicable codes and standards, as specified in the application guide. In addition, all housing that is reconstructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with 24 CFR 92.251(a). If a home is reconstructed, the applicant must also ensure compliance with the universal design features in new construction, established by §2306.514, Texas Government Code, required for any applicants utilizing federal or state money administered by the Department in the construction of single family homes.

REVIEW OF APPLICATIONS

HOME project funds will be awarded per State of Texas HOME Program Rules, 10 TAC 53. General Selection Criteria is listed in the State of Texas HOME Program Rules, 10 TAC 53 and forms the basis for the State's development of scoring criteria for each Activity. Scoring criteria may include the implementation of various bills, riders, and agency goals, which will be defined in the application process. The Department will conduct the review and scoring of all applications and make recommendations for funding.

SELECTION PROCESS

All applications for funds will be reviewed to ensure that all threshold requirements are met and the application meets all eligibility requirements. Application deficiencies may be cleared through the application deficiency process. Applications will be selected on a first come, first served basis based on the proposed tiered county distribution process. Funding recommendations will not be presented to the Board for approval. The Department's Board has granted the Executive Director authority to approve or deny funding recommendations as it relates to funding applications under this cycle.

APPLICATION PROCEDURES, FINAL FILING

The HOME Application Guide will be available on the Department's website at *www.tdhca.state.tx.us* or you may call (512) 475-3993 to request an application copy. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

A complete application should be submitted when the Applicant is ready to administer a program. Applications will be accepted on an ongoing basis until such time as all funding has been committed, or February 28, 2006. Applications will be accepted, reviewed and recommended to the Department's Executive Director for approval. Applications will be accepted in accordance with Department's process for handling Open Cycle Applications detailed at §53.58 of the HOME Rule.

Applications mailed via the U.S. Postal Service *must* be mailed to:

Texas Department of Housing & Community Affairs

Single Family Finance Production Division

P.O. Box 13941

Austin, Texas 78711-3941

Applications mailed by private carrier or hand-delivered will be received at the physical address of:

Texas Department of Housing & Community Affairs

Single Family Finance Production Division

221 East 11th Street

Austin, Texas 78701

If an application contains deficiencies which, in the determination of Department staff, require clarification or correction of information submitted at the time of application, staff may request clarification or correction of such deficiencies in accordance with 10 TAC 53.58(b). The Department may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted.

An applicant may appeal decisions made by the Department in accordance with 10 TAC §§1.7-1.8.

This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations and to attend application training workshops.

APPLICATION WORKSHOPS

The Department will present one-day HOME Program Application Workshops that will provide an overview of the HOME Program, application preparation and submission, evaluation criteria and information about the major Federal and State requirements that may affect a HOME project. The HOME Application Workshop schedule and registration will be posted on the Department's website at www.tdhca.state.tx.us.

RESOLUTION REQUIREMENTS

The Department requires that all applications submitted must include a resolution from the applicant's direct governing body (Board of Directors) authorizing the submission of the application.

AUDIT REQUIREMENTS

An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

TRD-200600272

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: January 18, 2006

♦ ♦ ♦

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Donna Village Apartments) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Ochoa Elementary, 424 South 11th Street, Donna, Hidalgo County, Texas 78537, at 6:00 p.m. on February 16, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $1,700,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to VOA Texas Donna Village, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, rehabilitating, and equipping a multifamily housing development (the "Development") described as follows: 58-unit multifamily residential rental development located at 301 Silver Avenue, Hidalgo County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512)

475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200600252
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 18, 2006

♦ ♦ ♦

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Falfurrias Village Apartments) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Falfurrias Junior High School, 600 South Center Street, Falfurrias, Brooks County, Texas 78355, at 6:00 p.m. on February 15, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $1,500,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to VOA Texas Falfurrias Village, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, rehabilitating, and equipping a multifamily housing development (the "Development") described as follows: 50-unit multifamily residential rental development located at 898 South Center Street, Brooks County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P. O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200600245
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 18, 2006

♦ ♦ ♦

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Royal Palms Apartments) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Peck Elementary School, 5130 Arvilla, Houston, Harris County, Texas 77021, at 6:00 p.m. on February 16, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $2,400,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to VOA Texas Royal Palms, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, rehabilitating, and equipping a multifamily housing development (the "Development") described as follows: 126-unit multifamily residential rental development located at 5601 Royal Palms Street, Houston, Harris County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P. O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200600240
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 18, 2006

♦ ♦ ♦

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Webber Gardens Apartments) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at A. M. Pate Elementary School, 3800 Anglin Drive, Fort Worth, Tarrant County, Texas 76119, at 6:00 p.m. on February 13, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $3,600,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to VOA Texas Webber Gardens, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, rehabilitating, and equipping a multifamily housing development (the "Development") described as follows: 120-unit multifamily residential rental development located at 4830 Virgil Street, Fort Worth, Tarrant County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be

directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P. O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200600244
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 18, 2006

♦ ♦ ♦

Notice of Request for Proposals

HOME Investment Partnership Program

Notice is hereby given of a Request for Proposals (RFP) by the Texas Department of Housing and Community Affairs (TDHCA) for the provision of inspections, write-ups, and management services. The specification describes work to be completed by a competent management/consulting firm acting on behalf of TDHCA in the overall management of remediation of consumer complaints related to a statewide owner-occupied rehabilitation/reconstruction and homebuyer assistance program. The contracted firm will complete inspections, work write-ups, and cost estimates for twenty-three (23) single family homes throughout the state. In addition, the contracted firm will assist the TDHCA in conducting specific oversight activities of construction contracts during a second phase of this process. Proposals will be due at the offices of TDHCA on or before March 17, 2006 at 5:00 p.m.

The RFP will be available in the Texas Marketplace which can be accessed at www.marketplace.state.tx.us. Any questions regarding this RFP should be directed to Julie Dumbeck by e-mail at julie.dumbeck@tdhca.state.tx.us or by phone at (512) 475-3991.

TRD-200600254
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 18, 2006

♦ ♦ ♦

Request for Qualifications for Real Estate Brokerage Services

I. Purpose of the Request

The Texas Department of Housing and Community Affairs (the Department or TDHCA) is requesting submission of qualifications to provide real estate marketing and brokerage services for owners of Housing Tax Credit (HTC) properties in Texas.

The Department reserves the right to compile a list of approved firms, based on submitted qualifications, for use by owners of HTC developments who have submitted requests for qualified contracts. The qualified firms will assist owners with the disposition of multifamily and single family HTC rental developments.

II. Response Time Frame and Other Information

Response Due: Open

It is the expressed policy of the Department that responding firms refrain from initiating any direct contact or communication with members of the Department's Board of Directors in regard to the selection of firms relative to this Request for Qualifications (RFQ) while the selection process is occurring. Any violation of this policy will be considered a basis for disqualification.

Also, in releasing this RFQ, the Department shall not be obligated to proceed with any action on the RFQ and may decide that it is in the Department's best interest to refrain from pursuing any selection process.

Submit one copy of the qualifications to the following address:

Texas Department of Housing and Community Affairs

Attn: Emily Price, Multifamily Finance Production Division

221 East 11th Street

Austin, TX 78701

Or via the U.S. Postal Service to:

Texas Department of Housing and Community Affairs

Attn: Emily Price, Multifamily Finance Production Division

Post Office Box 13941

Austin, TX 78711-3941

III. Response Format

Each item in Section IV of this RFQ should be specifically addressed. Otherwise, indicate why no response is given. Identify the item to be addressed in the introduction to each response. Please limit your response to relevant material and your qualifications to 10 pages in length; additional information may be submitted in the form of an attachment or appendix.

IV. Proposal Content

A. General Information

Provide information regarding the organization and structure of the firm including, but not limited to:

1. History of the firm, including the year organized;

2. Number of offices located in Texas;

3. Location of office(s) and brief description of support staff;

4. Number of licensed representatives located in Texas;

5. Names and brief resumes including licensing and certification of professionals employed by the firm; and

6. Areas of Texas the firm is willing to serve.

B. Experience

Provide information regarding the experience of the firm including, but not limited to:

1. Number of multifamily transactions brokered in Texas. Attach a descriptive list of multifamily properties sold in the last five years;

2. Description of familiarity with transactions involving housing tax credits and other affordable housing programs; and

3. Any other unique qualifications.

C. Work Plan

Provide a description of the firm's strategy to market and sell targeted properties.

D. Documentation of Standing and Licensing

Provide all of the following:

1. Documentation that the firm is authorized to do business in Texas;

2. Certificate of Good Standing from the State of Texas; and

3. Copy of the firm's real estate broker's license from the Texas Real Estate Commission.

E. Certification

Provide a certification that the firm is familiar with the Housing Tax Credit Program and the Qualified Contract Policy.

V. Financial Condition

Provide a copy of the firm's most recent audited financial statement, if available. This item should be included as an attachment or appendix and will not be considered part of the page limitation of qualifications.

VI. Departmental Information

Additional information regarding TDHCA may be obtained from Emily Price. All requests must be in writing and sent to (512) 475-0764 (fax) or emily.price@tdhca.state.tx.us (email). All questions and responses will be made available to all applicants and will be subject to disclosure under the Texas Public Information Act.

VII. Open Records

Information submitted to TDHCA is public information and is available upon request in accordance with the Texas Public Information Act, Chapter 552 of the Government Code (the "Act"). A firm submitting any information it considers confidential as to trade secrets or commercial or financial information, which it desires not to be disclosed, must clearly identify all such information in its proposal. If information so identified by a firm is requested from TDHCA, the firm will be notified and given an opportunity to present its position to the Texas Attorney General, who shall make the final determination as to whether such information is excepted from disclosure under the Act. Information not clearly identified as confidential will be deemed to be non-confidential and will be made available by TDHCA upon request.

VIII. Costs Incurred in Responding

All costs directly or indirectly related to the preparation of a response to this RFQ shall be the sole responsibility of and shall be borne by the firm.

TRD-200600253
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 18, 2006

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Texas Department of Insurance

Company Licensing

Application for incorporation to the State of Texas by INTEGRITY MEDICAL ASSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Denton, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200600258
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: January 18, 2006

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Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under §1501.312, Texas Insurance Code. A small employer health benefit plan issuer is defined by §1501.002(16), Texas Insurance Code, as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Subchapters C-H of Chapter 1501, Texas Insurance Code. A risk-assuming health benefit plan issuer is defined by §1501.301(4), Texas Insurance Code, as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Federated Mutual Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Archie Clayton, 333 Guadalupe, Tower I, Room 860, Austin, Texas.

If you wish to comment on the application of Federated Mutual Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200600257
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: January 18, 2006

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application to change the name of TEXAS HEALTHCARE FOUNDATION, L.C. to TEXAS HEALTHCARE FOUNDATION, L.P., a domestic third party administrator. The home office is LEWISVILLE, TEXAS.

Application to change the name of SYKES HEALTHPLAN SERVICE BUREAU, INC. to SHPS HUMAN RESOURCE SOLUTIONS, INC., a foreign third party administrator. The home office is LOUISVILLE, KENTUCKY.

Application for admission to Texas of EMPLOYEE BENEFIT MANAGEMENT SERVICES, INC. (using the assumed name of EBMS, INC.), a foreign third party administrator. The home office is BILLINGS, MONTANA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200600259
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: January 18, 2006

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Texas Lottery Commission

Public Comment Hearing

A public hearing to receive public comments regarding proposed amendments at 16 TAC §402.600, relating to Bingo Reports, will be held on Wednesday, February 8, 2006, at 11:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200600271
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 18, 2006

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Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on January 13, 2006, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Texas and Kansas City Cable Partners, L.P. d/b/a Time Warner Cable to Amend its State-Issued Certificate of Franchise Authority, Project Number 32282 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32282.

TRD-200600239
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 17, 2006

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Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on January 11, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Cox Communications for a State-Issued Certificate of Franchise Authority, Project Number 32272 before the Public Utility Commission of Texas.

Applicant intends to provide cable and video service. The requested CFA service includes area in the municipalities of Leander and Hearne.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32272.

TRD-200600238
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 17, 2006

♦ ♦ ♦

Notice of Application for a Certificate of Convenience and Necessity for Service Area Exception within Llano County

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on January 11, 2006 for service area boundary exception within Llano County, Texas.

Docket Style and Number: Application of Pedernales Electric Cooperative, Incorporated for a Certificate of Convenience and Necessity for Service Area Exception within Llano County. Docket Number 32271.

The Application: Pedernales Electric Cooperative, Incorporated (PEC) and Central Texas Electric Cooperative (CTEC) requested a boundary exception to allow PEC to provide electric service to a single customer, Mr. Ronald Yates. CTEC has agreed to the proposed boundary exception between the two companies because PEC has facilities closest to the site.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than February 6, 2006, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32271.

TRD-200600230
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 13, 2006

♦ ♦ ♦

Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on January 10, 2006, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary in Falls County, Texas.

Docket Style and Number: Application of AT&T Texas to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundaries of Eddy Zone of Waco Metropolitan Exchange (AT&T) and the Oenaville Exchange (Sprint). Docket Number 32266.

The Application: The minor boundary amendment is being filed to realign the boundary between AT&T's Eddy Zone of the Waco Metropolitan exchange and Sprint's Oenaville exchange to allow AT&T to provide local exchange telephone service to a current AT&T customer who owns a tract of land that is divided in half by the common boundary line. Sprint has provided a letter of concurrence endorsing this proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by February 3, 2006, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32266.

TRD-200600228
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 13, 2006

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On January 10, 2006, Logix Communications filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60155. Applicant intends to reflect a legal name change as the result of conversion to a limited partnership.

The Application: Application of Logix Communications for an Amendment to its Service Provider Certificate of Operating Authority; Docket Number 32267.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 1, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32267.

TRD-200600208
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 12, 2006

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Notice of Application for an Amendment to the Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 11, 2006, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Santa Rosa Telephone Cooperative, Incorporated to Amend its Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to P.U.C. Substantive Rule §26.418. Docket Number 32275.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 16, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32275.

TRD-200600226
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 13, 2006

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Notice of Application for an Amendment to the Designation as an Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 11, 2006, for designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.417.

Docket Title and Number: Application of Santa Rosa Telephone Cooperative, Incorporated to Amend its Designation as an Eligible Telecommunications Provider (ETP) Pursuant to P.U.C. Substantive Rule §26.417. Docket Number 32274.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 16, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32274.

TRD-200600225
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 13, 2006

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 11, 2006, for designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. §214(e).

Docket Title and Number: Application of Nexus Communications, Incorporated for Designation as an Eligible Telecommunications Carrier (ETC) under 47 U.S.C. §214(e). Docket Number 32277.

The Application: The company is requesting ETC designation to offer the services supported by the Federal Universal Service Fund support mechanisms under 47 C.F.R. §254(c), as listed in 47 C.F.R. §54.101, using a combination of its own facilities and resale of SBC, Sprint, and Verizon's services throughout the service area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at

1-888-782-8477 no later than February 16, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32277.

TRD-200600227
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 13, 2006

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Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.418 and §26.417

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on January 9, 2006, for designation as an eligible telecommunications carrier (ETC) and as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.418 and §26.417, respectively.

Docket Title and Number: Application of ClearTel Telecommunications, Incorporated for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to P.U.C. Substantive Rule §26.418 and Eligible Telecommunications Provider (ETP) Pursuant to P.U.C. Substantive Rule §26.417. Docket Number 32258.

The Application: The company is requesting ETC/ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs and ETPs for service areas set forth by the commission. ClearTel seeks ETC/ETP designation in the local exchanges of the following incumbent local exchange carrier: Southwestern Bell Telephone Company of Texas (AT&T Texas).

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 16, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32258.

TRD-200600173
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 11, 2006

♦ ♦ ♦

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 9, 2006, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of LMDS Holdings, Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 32259 before the Public Utility Commission of Texas.

Applicant intends to provide T1-Private Line, Fractional T1 (business), and wireless services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 1, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32259.

TRD-200600174
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 11, 2006

♦ ♦ ♦

Notice of Application to Modify Exchange Boundary Pursuant to PURA §54.008

Notice is given to the public of an application filed on January 10, 2006 with the Public Utility Commission of Texas, to modify the service area boundary between Verizon Southwest (Verizon) and AT&T Texas (AT&T).

Docket Style and Number: Petition of Logix Communications to Modify Exchange Boundary Between Verizon Southwest and AT&T Texas Pursuant to PURA §54.008. Docket Number 32268.

The Application: Logix requests that the commission rule that portions of Verizon's service territory that is not being actively served by Verizon but is being served by AT&T Texas, be moved within the contiguous service territory of AT&T Texas. Logix has determined that there appear to be portions of some or all of the Carrollton, Denton, Grapevine, Irving, Keller, Lewisville, and Plano rate centers, where Verizon has chosen to not extend facilities but AT&T has. Logix urged it is these portions of those rate centers that should have their boundaries modified pursuant to Public Utility Regulatory Act §54.008.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32268.

TRD-200600229
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 13, 2006

♦ ♦ ♦

Railroad Commission of Texas

Request for Comments on New OW Forms in Conjunction with Proposed Amendments to 16 TAC §3.80

The Railroad Commission of Texas (Commission) requests comments on certain new Oil and Gas Division forms as part of the proposed amendments to 16 TAC §3.80, relating to Commission Forms, Applications, and Filing Requirements, published in this issue of the *Texas Register*. The amendments to §3.80 are proposed in the Table only and

refer to proposed new Form OW-1, Application for Authority to Conduct a Surface Inspection of Orphaned Oil or Gas Wells; new Form OW-2, Application for Certificate of Designation as the Operator of Orphaned Oil or Gas Wells; and new Form OW-3, Application for Payment for Reactivating or Plugging an Orphaned Oil or Gas Well. The Commission is requesting comments on both the proposed amendments to §3.80 and these proposed new forms.

RAILROAD COMMISSION OF TEXAS
Oil and Gas Division

APPLICATION FOR AUTHORITY TO CONDUCT A SURFACE INSPECTION OF ORPHANED OIL OR GAS WELLS

FORM OW-1
EFF. 01-2006

Draft 01-10-06

READ INSTRUCTIONS ON BACK

-RRC USE ONLY-
P-5 Status: _____
Financial Security Status: _____
Initials of P-5 reviewer: _____
Date: _____

1. Operator name (exactly as shown on P-5 Organization Report)		2. Operator P-5 No.
3. Operator address (including city, state, and zip code)		
4. County:	5. Field Name:	6. Field No.:
7. Lease Name		
8. Individual well information (exactly as shown on Proration Schedule) *NOTE: Please complete one form for each lease.*		

Oil Lease or Gas ID No.	Well Number	API No. (if known) 42-		Oil Lease or Gas ID No.	Well Number	API No. (if known) 42-

CERTIFICATION

In accordance with §89.047, Tex. Nat. Res. Code, relating to the Orphaned Well Reduction Program, I seek authority to conduct a surface inspection of above-listed well(s) for the purpose of assessing the current status and viability of the well(s). I hereby agree to the requirements and conditions of such authority, if granted.

I declare under penalties in §91.143, Texas Natural Resources Code, that I am authorized to file this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated therein are true, correct and complete to the best of my knowledge.

SIGNATURE _____ **NAME (Print or Type)** _____

TITLE _____ **PHONE** ( ) _____ **DATE** _____

NAME OF PERSON TO CONDUCT SURFACE INSPECTION, IF OTHER THAN PERSON ABOVE (Print or Type): _____ **PHONE** ( ) _____

REQUIREMENTS AND CONDITIONS

The operator must deliver written notice to the appropriate Commission District Office and to the owner of record of the surface estate and any occupant of the tract on which the well is located at least three (3) days before the date of the inspection. The notice must: include a copy of this confirmation of authority to conduct a surface inspection, and the date and approximate time that the operator will conduct the inspection.

Date of Inspection: _____ **Approximate time:** _____

In conducting a surface inspection of the orphaned wells, the person authorized by this confirmation may visually inspect the wells and all related equipment, tanks, and other facilities and may conduct noninvasive testing such as using a gauge to determine the pressure present at the wellhead but may not produce oil or gas from the wells, reenter the wells, pull tubing from or perform any other type of downhole work on the wells, conduct a salvage operation on the wells, or remove any tangible item from the well sites or lease.

Issuance of this confirmation does not guarantee that the Commission will designate the applicant as the operator of the referenced wells. This certificate will not prevent transfer of the wells to an operator who has a good faith claim. The Commission must process any lease or well transfer requests as they are received.

-RRC USE ONLY-

CONFIRMATION OF AUTHORITY TO CONDUCT A SURFACE INSPECTION OF ORPHANED WELLS

The operator noted above is an operator in good standing and the subject wells are not already subject to nomination; therefore, the Commission hereby accepts the nomination and hereby confirms the operator's authority to conduct a surface inspection of the nominated wells, subject to the requirements and conditions stated herein.

Approved by: _____

Approval Date: _____

This authority EXPIRES 30 calendar days from the Approval Date.

INSTRUCTIONS
FORM OW-1
APPLICATION FOR AUTHORITY TO CONDUCT A SURFACE INSPECTION OF ORPHANED OIL OR GAS WELLS
EFF. 01-2006

ORPHANED WELL REDUCTION PROGRAM: Section 89.047, Texas Natural Resources Code, relating to Orphaned Well Reduction Program, establishes procedures, requirements, and incentives for a person to assume operatorship and regulatory responsibility for orphaned oil or gas wells. A person who is considering assumption of operatorship and regulatory responsibility for orphaned oil or gas wells must submit this form in order to nominate the well under consideration.

ELIGIBILITY: The Commission may only approve a request to nominate and conduct a surface inspection of an orphaned well if the operator:

(1) has a Commission-approved Organization Report (Form P-5) on file with the Commission;

(2) is the designated operator of at least one well within the Commission's jurisdiction;

(3) has filed with the Commission under §91.104, Tex. Nat. Res. Code, financial security (a bond, letter of credit, or cash deposit) in an amount sufficient to qualify to operate one or more additional wells; and

(4) is an operator in good standing (is not the subject of a Commission or court order regarding a violation of a Commission rule with which the operator has not complied or a complaint that has been docketed by the Commission alleging a violation of a Commission rule).

APPLICATION REQUIREMENTS: If you meet the eligibility requirements and you wish to conduct a surface inspection of an orphaned well, mail a completed, signed FORM OW-1, APPLICATION FOR AUTHORITY TO CONDUCT A SURFACE INSPECTION OF ORPHANED OIL OR GAS WELLS, to the P-5 Section, Oil and Gas Division, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas, 78711-2967. Please complete one form for each lease.

CONFIRMATION OF AUTHORITY TO CONDUCT A SURFACE INSPECTION: If the wells have not been nominated already or transferred to another operator and the operator applying for well nomination is an operator in good standing in accordance with §89.047, Tex. Nat. Res. Code, the Commission will accept the nomination and issue confirmation of authority to conduct a surface inspection of the wells subject to the stated requirements and conditions on the front of this form. The authority expires 30 calendar days from the approval date.

SUBSEQUENT FILINGS: If you wish to be designated as the operator of orphaned oil or gas wells under this program, you must file:

1. a completed FORM OW-2, APPLICATION TO BE DESIGNATED AS OPERATOR OF ORPHANED OIL OR GAS WELLS;
2. FORM P-4, Producer's Transportation Authority and Certificate of Compliance, in accordance with 16 TAC §3.58 (Statewide Rule 58);
3. if you are not requesting designation as the operator of all wells on a lease, FORM P-6, Request for Permission to Consolidate/Subdivide Leases, along with a before and after plat and all required attachments;
4. a factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate accessed by the well, such as evidence of a current oil and gas lease or a recorded deed conveying a fee interest in the mineral estate;
5. sufficient financial security in accordance with 16 TAC §3.78 (Rule 78) to cover the well or wells for which you wish to be designated as operator, and
6. a non-refundable fee in the amount of $250 FOR EACH WELL for which you wish to be designated as the operator.

The Commission will issue a CERTIFICATE OF DESIGNATION AS OPERATOR OF ORPHANED OIL OR GAS WELLS to the person who is designated by the Commission under §89.047, Texas Natural Resources Code, as the operator of an orphaned well.

BENEFITS OF DESIGNATION AS OPERATOR OF ORPHANED WELL FROM JANUARY 1, 2006, THROUGH DECEMBER 31 2007:

(1) A NONTRANSFERABLE PAYMENT FROM THE COMMISSION in an amount equal to the depth of the well multiplied by $0.50 for each foot of well depth if, not later than the third anniversary of the date the Commission designates the person as the operator of the well, the person brings the well back into continuous active operation or plugs the well in accordance with Commission rules. LIMITS ON PAYMENTS: Please note that the Commission must make payments to operators annually in the same order the Commission determines the operators to be entitled to the payments. The aggregate amount of payments in any state fiscal year (September 1 through August 31) may not exceed $500,000. An operator may not receive more than one payment under the Orphaned Well Reduction Program for the same well; or cumulative payments in an amount that exceeds the total amount of financial security the operator has filed with the Commission under 16 TAC 3.78 (Statewide Rule 78).

(2) A NONTRANSFERABLE EXEMPTION FROM THE OIL FIELD CLEANUP REGULATORY FEES provided by §§81.116 and 81.117 for all future production from the well.

(3) A NONTRANSFERABLE EXEMPTION FROM SEVERANCE TAXES for all future production from the well as provided by §202.060, Tax Code. A well is considered to be in continuous active operation for purposes of the exemption if: (1) the well is a producing well and the well has produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months as shown in the records of the Commission and as authorized by a permit issued by the Commission; or (2) the well is a service well and the well has been used for the disposal or injection of oil and gas wastes or another purpose related to the production of oil or gas for at least three consecutive months as shown in Commission records and as authorized by a permit issued by the Commission.

REQUIREMENTS TO QUALIFY FOR TAX EXEMPTION: Under §202.060, Texas Tax Code, relating to Exemption for Oil and Gas From Reactivated Orphaned Wells, the hydrocarbons produced from the well identified in the certificate qualify for a severance tax exemption. In order to qualify for this tax exemption, the person responsible for paying the tax must apply to the Texas Comptroller of Public Accounts (Comptroller). The application must include a copy of the certificate issued by the Railroad Commission. The Comptroller may require a person applying for the tax exemption to provide any relevant information necessary to administer this section. The Comptroller may establish procedures to comply with this section. The exemption takes effect on the first day of the month following the month in which the Comptroller approves the application. The exemption is non-transferable. If the person to whom this certificate is issued ceases to be the operator of the well as shown by Commission records, the Commission will notify the Comptroller. The exemption expires on the date the Comptroller receives the notice. A person who makes or subscribes an application, report, or other document and submits it to the Commission to form the basis for an application for a tax exemption under this section, knowing that the application, report, or other document is untrue in a material fact, is subject to the penalties imposed by Chapters 85 and 91 of the Texas Natural Resources Code. A person is liable to the state for a civil penalty if the person applies or attempts to apply the tax exemption authorized by this section for a well after the person to whom the certificate for the well was issued ceases to be the operator of the well as shown by Commission records.

RAILROAD COMMISSION OF TEXAS
Oil and Gas Division

APPLICATION FOR CERTIFICATE OF DESIGNATION AS THE OPERATOR OF ORPHANED OIL OR GAS WELLS

FORM OW-2
EFF. 01-2006

-RRC USE ONLY-

READ INSTRUCTIONS ON BACK DRAFT 01-10-2006

P-4 Status: _____
Financial Security Status: _____
P-5 Status: _____
Initials of reviewer: _____
Date: _____

1. Operator name (exactly as shown on P-5 Organization Report)		2. Operator P-5 No.
3. Operator address (including city, state, and zip code)		
4. County:	5. Field Name:	6. Field No.:
7. Lease Name		

8. Individual well information (exactly as shown on Proration Schedule) *NOTE: Please complete one form for each lease.*

Oil Lease or Gas ID No.	Well Number	API No. (if known) 42-		Oil Lease or Gas ID No.	Well Number	API No. (if known) 42-

CERTIFICATION

In accordance with §89.047, Tex. Nat. Res. Code, relating to the Orphaned Well Reduction Program, I wish to be designated as the operator of the above-listed orphaned oil or gas wells.

I declare under penalties in §91.143, Texas Natural Resources Code, that I am authorized to file this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated therein are true, correct and complete to the best of my knowledge.

SIGNATURE _____ NAME (Print or Type) _____

TITLE _____ PHONE ( ) _____ DATE _____

You must remit a non-refundable fee in the amount of $250 FOR EACH WELL for which you wish to be designated as the operator. (Make any check or money order payable to Railroad Commission of Texas. For information on use of credit cards, contact the Commission.)

MAIL THIS FORM, ATTACHMENTS, AND FEE(S) TO:

Commission Cashier
Railroad Commission of Texas
P. O. Box 12967
Austin, Texas 78711-2967

-RRC USE ONLY-

REGISTER No. _____

GL # _____

Amount _____ Remit Type _____

-RRC USE ONLY-

RAILROAD COMMISSION OF TEXAS
CERTIFICATE OF DESIGNATION AS OPERATOR OF ORPHANED OIL OR GAS WELLS

The above-named operator has complied with the requirements of Section 89.047, Texas Nat. Res. Code, relating to the Orphaned Well Reduction Program, and is hereby designated as the operator of the above-listed well(s) for the purposes of that section.

APPROVED BY: _____ DATE: _____

NOTE: It is the operator's responsibility to submit to the Comptroller of Public Accounts any information required to apply for the exemptions from severance tax and Oil Field Cleanup Regulatory fees on production from this well(s) authorized by §89.047, Tex. Nat. Res. Code.

INSTRUCTIONS
FORM OW-2
APPLICATION FOR CERTIFICATE OF DESIGNATION AS OPERATOR OF ORPHANED OIL OR GAS WELLS
EFF. 01-2006

ORPHANED WELL REDUCTION PROGRAM: Section 89.047, Texas Natural Resources Code, relating to Orphaned Well Reduction Program, establishes procedures, requirements, and incentives for a person to assume operatorship and regulatory responsibility for an orphaned oil or gas well. A person who is considering assumption of operatorship and regulatory responsibility for an orphaned oil or gas well(s) must submit this form in order to be designated the operator of an orphaned well under that program. Please complete one form for each lease.

WHAT TO FILE: If you wish to be designated as the operator of an orphaned oil or gas well(s) under this program, you must file:

(1) a completed FORM OW-2, APPLICATION FOR CERTIFICATE OF DESIGNATION AS OPERATOR OF ORPHANED OIL OR GAS WELLS;

(2). FORM P-4, Producer's Transportation Authority and Certificate of Compliance, in accordance with 16 TAC §3.58 (Statewide Rule 58);

(3) if you are not requesting designation as the operator of all wells on a lease, FORM P-6, Request for Permission to Consolidate/Subdivide Leases, along with a before and after plat and all required attachments;

(4) a factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate accessed by the well, such as evidence of a current oil or gas lease or a recorded deed conveying a fee interest in the mineral estate; and

(6) a non-refundable fee in the amount of $250 FOR EACH WELL for which you wish to be designated as the operator.

PREREQUISITES: If you wish to be designated as the operator of an orphaned oil or gas well(s) under this program, you must:

(1) have on file with the Commission sufficient financial security in accordance with 16 TAC §3.78 (Rule 78) to cover the well or wells for which you wish to be designated as operator; and

(2) be an operator in good standing (an operator who: (a) has a Commission-approved organization report; (b) is the designated operator of at least one well within the Commission's jurisdiction; (c) has filed with the Commission under §91.104, Tex. Nat. Res. Code, a bond, letter of credit, or cash deposit in an amount sufficient to qualify to operate one or more additional wells; and (d) is not the subject of a Commission or court order regarding a violation of a Commission rule with which the operator has not complied or a complaint that has been docketed by the Commission alleging a violation of a Commission rule.)

In addition, if the well is subject to a Commission Final Order requiring plugging, you will not be recognized as the operator unless the Commission first conducts a hearing and enters a superceding order.

WHERE TO FILE: File this form, the attachments and $250 for each well to Commission Cashier, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967P-5 Section, Oil and Gas Division, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas, 78711-2967. Make any check or money order payable to the Railroad Commission of Texas. For information on credit card or pre-paid accounts, contact the Commission.

If the wells have not already been nominated or transferred to another operator, the operator applying for a certificate of designation as operator of the well is an operator in good standing in accordance with §89.047, Tex. Nat. Res. Code, the operator submits the required attachments and fees, and the operator has sufficient financial security in accordance with Rule 78 to cover the wells, the Commission will issue a CERTIFICATE OF DESIGNATION AS OPERATOR OF ORPHANED OIL OR GAS WELLS to the person who is designated by the Commission under §89.047, Texas Natural Resources Code, as the operator of orphaned wells.

BENEFITS OF DESIGNATION AS OPERATOR OF ORPHANED WELL FROM JANUARY 1, 2006, THROUGH DECEMBER 31 2007:

A person designated as the operator of an orphaned well on or after January 1, 2006, and not later than December 31, 2007, is entitled to receive:

(1) A NONTRANSFERABLE PAYMENT FROM THE COMMISSION in an amount equal to the depth of the well multiplied by $0.50 for each foot of well depth if, not later than the third anniversary of the date the Commission designates the person as the operator of the well, the person brings the well back into continuous active operation or plugs the well in accordance with Commission rules. LIMITS ON PAYMENTS: Please note that the Commission must make payments to operators annually in the same order the Commission determines the operators to be entitled to the payments. The aggregate amount of payments in any state fiscal year (September 1 through August 31) may not exceed $500,000. An operator may not receive more than one payment under the Orphaned Well Reduction Program for the same well; or cumulative payments in an amount that exceeds the total amount of financial security the operator has filed with the Commission under 16 TAC 3.78 (Statewide Rule 78).

(2) A NONTRANSFERABLE EXEMPTION FROM THE OIL FIELD CLEANUP REGULATORY FEES provided by §§81.116 and 81.117 for all future production from the well.

(3) A NONTRANSFERABLE EXEMPTION FROM SEVERANCE TAXES for all future production from the well as provided by §202.060, Tax Code. A well is considered to be in continuous active operation for purposes of Subsection (h)(3) if: (1) the well is a producing well and the well has produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months as shown in the records of the Commission and as authorized by a permit issued by the Commission; or (2) the well is a service well and the well has been used for the disposal or injection of oil and gas wastes or another purpose related to the production of oil or gas for at least three consecutive months as shown in Commission records and as authorized by a permit issued by the Commission.

REQUIREMENTS TO QUALIFY FOR TAX EXEMPTION: Under §202.060, Texas Tax Code, relating to Exemption for Oil and Gas From Reactivated Orphaned Wells, the hydrocarbons produced from the well identified in the certificate qualify for a severance tax exemption. In order to qualify for this tax exemption, the person responsible for paying the tax must apply to the Texas Comptroller of Public Accounts (Comptroller). The application must include a copy of the certificate issued by the Railroad Commission. The Comptroller may require a person applying for the tax exemption to provide any relevant information necessary to administer this section. The Comptroller may establish procedures to comply with this section. The exemption takes effect on the first day of the month following the month in which the Comptroller approves the application. The exemption is non-transferable. If the person to whom this certificate is issued ceases to be the operator of the well as shown by Commission records, the Commission will notify the Comptroller. The exemption expires on the date the Comptroller receives the notice. A person who makes or subscribes an application, report, or other document and submits it to the Commission to form the basis for an application for a tax exemption under this section, knowing that the application, report, or other document is untrue in a material fact, is subject to the penalties imposed by Chapters 85 and 91 of the Texas Natural Resources Code. A person is liable to the state for a civil penalty if the person applies or attempts to apply the tax exemption authorized by this section for a well after the person to whom the certificate for the well was issued ceases to be the operator of the well as shown by Commission records.

RAILROAD COMMISSION OF TEXAS Oil and Gas Division	**APPLICATION FOR PAYMENT FOR REACTIVATING OR PLUGGING AN ORPHANED OIL OR GAS WELL** SEE INSTRUCTIONS ON REVERSE SIDE	**FORM OW-3** EFF. 01-2006 DRAFT 01-10-2006

1. Operator name (exactly as shown on P-5 Organization Report) OR Surface Estate Owner Name:			2. Operator P-5 No. (if applicable):
3. Operator OR Surface Estate Owner address (including city, state, and zip code):			4. Phone No.:
5. Field Name:	6. Field No.:		7. County:
8. Lease Name	9. Lease No./Gas ID No.:	10. Well No.:	11. API No.: **42-**

OPERATOR REQUEST FOR PAYMENT

I hereby request payment in accordance with Tex. Nat. Res. Code, §89.047, Orphan Well Reduction Program.

☐ I was designated as the operator of the above-listed orphan well. [ATTACH a copy of the Commission's Certificate of Designation as Operator of Orphaned Oil or Gas Wells (approved Form OW-2), for the subject well.]

☐ I have plugged the orphaned well in accordance with Commission's rules. [ATTACH a copy of Form W-3, Plugging Record, for the subject well.]

☐ I have brought the well back into continuous active operation by:

☐ producing well and the well has produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months as shown in Commission records and as authorized by a permit issued by the Commission. ATTACH documentation.

OR

☐ using the well as a service well for the disposal or injection of oil and gas wastes or another purpose related to the production of oil or gas for at least three (3) consecutive months as shown in Commission records and as authorized by a permit issued by the Commission. [ATTACH a copy of Form H-10 or other information demonstrating use of the well as a service well for at least three (3) consecutive months.]

SURFACE ESTATE OWNER REQUEST FOR PAYMENT

I hereby request payment in accordance with Tex. Nat. Res. Code, §89.048, Plugging of a Well by Surface Estate Owner.

☐ The above-listed well has been plugged by a Commission-approved plugger in accordance with Commission rules. [ATTACH a copy of the Form W-3 and documentation of the cost of the well-plugging operation.]

CERTIFICATION: I declare under penalties in §91.143, Tex. Nat. Res. Code, that I am authorized to file this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated therein are true, correct and complete to the best of my knowledge.

Name of Representative (Print)	Signature of Representative	Date (mm/dd/yy)

RRC USE ONLY

PAYMENT TO OPERATOR OF AN ORPHANED WELL	PAYMENT TO SURFACE ESTATE OWNER FOR PLUGGING ORPHANED WELL
Total Depth of the Well: _____ Feet Total Financial Security: $ _____ Total Previous Payments: $ _____ PAYMENT: $ _____	Total Depth of Well: _____ Feet Average cost of plugging last 24 months: $ _____ PAYMENT: $ _____

APPROVED BY: _____ DATE: _____

INSTRUCTIONS
FORM OW-3
APPLICATION FOR PAYMENT FOR REACTIVATING OR PLUGGING AN ORPHANED OIL OR GAS WELL
EFF. 01-2006

Through House Bill 2161, the 79th Texas Legislature (2005) created two programs to encourage the plugging or re-activation of "Orphaned Wells," which are defined as wells issued a permit by Commission with no reported production or activity for the preceding twelve months and whose designated operator's organization report has lapsed. One program provides for "adoption" of such wells by oil and gas operators (the Orphaned Well Reduction Program). The second program provides for payments to surface owners who contract with Commission-approved pluggers to plug orphaned wells on their surface estate.

OPERATORS - ORPHANED WELL REDUCTION PROGRAM

Under HB 2161, Tex. Nat. Res. Code, §89.047, relating to Orphaned Well Reduction Program, establishes procedures, requirements, and incentives for a person to assume operatorship and regulatory responsibility for an orphaned oil or gas well. If the operator is designated as the operator of the orphaned well, in addition to certain tax exemptions, the operator also may be entitled to a payment of 50 cents per foot of well depth if the operator plugs the well or brings the well back into continuous service (produces 10 barrels of oil or 100 mcf of gas for at least three consecutive months.)

ELIGIBILITY: In order for an operator to receive payment under the Orphan Well Reduction Program, the operator and the adopted orphan well must meet certain eligibility requirements:

(1) The operator must have been designated the operator of the orphaned well on or after January 1, 2006, and on or before December 31, 2007, in order to be entitled to receive the payment under the Orphan Well Reduction Program.

(2) A well is considered to be in continuous active operation for purposes of payment if:

(a) the well is a producing well (a well classified by the Commission as an oil or gas well in accordance with Commission rules) and the well has produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months as shown in Commission records and as authorized by a permit issued by the Commission; or

(b) the well is a service well and the well has been used for the disposal or injection of oil and gas wastes or another purpose related to the production of oil or gas for at least three consecutive months as shown in Commission records and as authorized by a permit issued by the Commission. "Service well" means a well for which the Commission has issued a permit that is not a producing well. The term includes an injection, disposal, or brine mining well.

WHERE AND WHAT TO FILE: File FORM OW-3 and all required attachments with:

Field Operations
Oil and Gas Division
Railroad Commission of Texas
P. O. Box 12967
Austin, Texas 78711-2967

LIMITS ON PAYMENTS: Please note that in accordance with §89.047, Tex. Nat. Res. Code, the Commission must make payments to operators annually in the same order the Commission determines the operators to be entitled to the payments. The aggregate amount of payments in any state fiscal year (September 1 through August 31) may not exceed $500,000. An operator may not receive more than one payment for the same well; or cumulative payments in an amount that exceeds the total amount of financial security the operator has filed with the Commission under 16 TAC §3.78. In addition, the payment is nontransferable; therefore, the Commission may make the payment ONLY to the operator who was designated as the operator of the orphaned well.

PLUGGING OF AN ORPHANED WELL - SURFACE ESTATE OWNER

Under HB 2161, if an orphaned well were plugged by a plugger under contract to the surface owner, the Commission may use funds from the Oil Field Cleanup Fund to reimburse the surface owner for those plugging costs in an amount not to exceed 50% of the lesser of actual costs or the average cost incurred by Commission in the preceding 24 months in plugging similar wells. Under Section 89.048, Tex. Nat. Res. Code, the owner of an interest in the surface estate of a tract of land on which an orphaned well is located may contract with a Commission-approved well plugger to plug the well.

If the surface estate owner enters into a plugging contract under §89.048, the well plugger must:

(1) not later than the 30th day before the date the well is plugged, mail notice of its intent to plug the well to the operator of the well at the operator's address as shown by the records of Commission;

(2) assume responsibility for the physical operation and control of the well as shown by a form the person files with the Commission and the Commission approves;

(3) file a bond, letter of credit, or cash deposit covering the well as required by §91.107; and

(4) plug the well in accordance with Commission rules in effect at the time of plugging.

On successful plugging of the well by the well plugger, the surface estate owner may submit documentation to the Commission of the cost of the well-plugging operation. The Commission will reimburse the surface estate owner from money in the Oil Field Cleanup Fund in an amount not to exceed 50 percent of the lesser of:

(1) the documented well-plugging costs; or

(2) the average cost incurred by the Commission in the preceding 24 months in plugging similar wells located in the same general area.

A list of Commission-approved cementers (pluggers) can be found on the Commission's web page at http://www.rrc.state.tx.us/divisions/og/environmental_protect.html under Field Operations - Well Plugging. This list is updated periodically. Or, you may contact the appropriate Railroad Commission District Office.

Comments on the proposed amendments to §3.80 or these proposed new forms included in this notice may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments on the forms listed in this notice for 30 days after publication of the proposed amendments to §3.80 in the *Texas Register* and encourages all interested persons to submit comments on the forms no later than this deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Leslie Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

Issued in Austin, Texas, on January 10, 2006.

TRD-200600177
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: January 11, 2006

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Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Atlanta, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering construction services described below:

Airport Sponsor: City of Atlanta, Atlanta Municipal Airport. TxDOT CSJ No. 0619ALNTA. Scope: Provide professional engineering services for the construction management and close-out phases of a previously designed airfield lighting project for the Atlanta Municipal Airport project.

The **DBE** goal is set at 0%. TxDOT Project Manager is Harry Lorton, P.E.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "Atlanta Municipal Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address **http://www.dot.state.tx.us/avn/avn550.doc**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Four completed, unfolded copies of Form AVN-550 must be postmarked by U. S. Mail by midnight February 9, 2006. Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on February 10, 2006. Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas 78704. Hand delivery must be received by 4:00 p.m. February 10, 2006.

Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at **www.dot.state.tx.us/business/avnconsultinfo.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Harry Lorton, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200600249
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: January 18, 2006

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Aviation Division - Request for Proposal for Professional Services

The City of Arlington, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: The City of Arlington, Arlington Municipal Airport. TxDOT CSJ No. 06MPARLNG. Scope: Prepare an Airport Master Plan which includes, but is not limited to, information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to development, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan.

The HUB goal is set at 0%. TxDOT Project Manager is Michelle Hannah.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address **http://www.dot.state.tx.us/avn/avn551.doc**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal for-

mat consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is an MS Word Template.

Six completed, unfolded copies of Form AVN-551 must be postmarked by U. S. Mail by midnight February 16, 2006. Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m February 17, 2006. Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas 78704. Hand delivery must be received by 4:00 p.m. February 17, 2006. Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Please mark the envelope of the forms to the attention of Sheri Quinlan. Electronic facsimiles or forms sent by email will not be accepted.

The consultant selection committee will be composed of Aviation Division staff members and one local government personnel member. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating planning proposals can be found at **www.dot.state.tx.us/business/avnconsultinfo.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Michelle Hannah, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200600250
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: January 18, 2006

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The University of Texas System

Notice on Entering into Major Consulting Services Contract

In accordance with the provisions of Chapter 2254, *Texas Government Code*, The University of Texas System Administration has entered into a contract for consulting services more particularly described in the Request for Proposal for Consulting Services related to the compensation study for System Administration office, filed with the Texas Register on August 25, 2005. The consultant will conduct job analyses, evaluations, and market pricing; develop a model pay structure based on System Administration's compensation philosophy; recommend corrective actions, if required; provide a report to UT System officials, both orally and in writing; and consult on implementation.

The name and address of the consultant is as follows:

Deloitte Consulting LLP

333 Clay Street, Suite 2300

Houston, Texas 77002-4196

The University will pay an amount not to exceed $129,325. The initial term of the contract shall be for a period beginning January 9, 2006 through August 31, 2006. The final report is due no later than April 14, 2006.

Any questions regarding this posting should be directed to:

Gary Gwaltney

Office of Employee Services

The University of Texas System

702 Colorado Street, Suite 2.150

Voice: 512/499-4587

Email: ggwaltney@utsystem.edu

TRD-200600223
Francie A. Frederick
Counsel and Secretary to the Board
The University of Texas System
Filed: January 13, 2006

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affecte***d. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).